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GOVERNMENT OF INDIA

MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 30th January 1950

No. LR (260)/I.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the All-India Industrial Tribunal (Bank Disputes), in the matter of alleged victimization, retrenchment, dismissals, etc., in respect of banking companies in the Province of Delhi, East Punjab and Bihar.

BEFORE THE ALL-INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES), BOMBAY

ADJUDICATION

BETWEEN

1. The Bharat Bank, Limited, Delhi.
2. The Punjab National Bank, Limited, Delhi.
3. Displaced Banks Association, Delhi.
4. The Allahabad Bank, Limited, Delhi.
5. The Central Bank of India, Limited, Delhi.
6. The Gadodia Bank, Limited, Delhi.
7. The Bank of Bihar, Limited, Patna.

AND

Their workmen

In the matter of alleged cases of victimization, retrenchment, dismissals, etc., in the Provinces of Delhi, East Punjab and Bihar.

Present:

Mr. K. C. Sen, *Chairman*,
Mr. J. N. Majumdar, *Member*,
Mr. N. Chandrasekhara Aiyar, *Member*.

Appearances:

Mr. Vedvyas, Advocate, for the Bharat Bank, Ltd.,
Mr. Ramlal Anand with Messrs. Hans Raj Sawhney and Charandas Puri, Advocates, for the Punjab National Bank, Limited,
Mr. A. R. Khosala, Advocate, for the Displaced Banks Association,
Mr. Lala Bishan Das, Manager, The Allahabad Bank, Limited,
Mr. H. C. Captain, for the Central Bank of India, Limited,
Mr. H. D. Grover, for the Gadodia Bank, Limited,

Mr. Girija Nandan Prasad and Mr. Devendra Prasad, for the Bank of Bihar, Limited,
Mr. H. L. Parwana, President, for the Bharat Bank Employees' Union, Delhi,
Mr. H. L. Parwana and Mr. H. L. Puri, for the Punjab National Bank Employees' Union, Delhi,
Mr. H. L. Dogra, for the Punjab National Bank Employees' Union (East Punjab), Ludhiana,
Mr. Dharam Vir Taneja, General Secretary, for the Punjab National Bank Workmen's Union, Delhi,
Mr. A. R. Whig, Advocate, for the Punjab National Bank Employees' Union, East Punjab,
Mr. Dayaldas, for the Allahabad Bank Employees' Union, Delhi,
Mr. J. N. Mehrotra, for the Employees of the Central Bank of India, Branches in Delhi,
Mr. Rajeswar Kumar, President, with Messrs. Ram Lakhan Singh and Ragho Nandan Prasad, for the Bank of Bihar Employees' Association, Patna.

AWARD

By their Order No. LR-2 (212), dated the 13th June 1949, the Ministry of Labour, Government of India, referred an industrial dispute between certain banking companies (including their branches) and their employees in respect of certain matters for adjudication by this Tribunal. As those matters comprised not merely questions of scales of pay and dearness allowance, etc., but also cases of retrenchment and victimization complained of by employees, and as demands for interim relief were made by employees in several provinces, the Tribunal decided to visit some places including Delhi and Patna, where demands for interim relief and individual complaints against banks could be conveniently enquired into locally. This Award will relate to such matters (excluding demands for interim relief regarding which separate Awards have been made) as were enquired into at Delhi and Patna and as admit of decision at the present stage.

A. *Cases of proposed retrenchment heard at Delhi.*

2. There were applications for permission of the Tribunal for retrenchment to be made by:—

(1) The Bharat Bank, Limited,
(2) The Punjab National Bank, Limited, and
(3) The Displaced Banks' Association.

After some discussion they said that they did not want to proceed with their applications and asked for permission to withdraw them. The permission was granted.

B. *Cases of alleged victimization heard at Delhi.*

3. Item 18 of Schedule II to the Ministry of Labour's Order, dated the 13th June 1949, is "Retrenchment and victimization (special cases to be cited by employees)." The expression "victimization" has not been defined in

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the Act. It is, however, often used, though the answer to the question, "What is victimization?" given by different Courts and Tribunals has not always been uniform. At page 373 of the Bombay Textile Labour Enquiry Committee's Report (1940) it was stated, "Under the Bombay Industrial Disputes Act, 1938, victimization of workers for being members of trade unions or for participating in union activities is made an offence and it may be hoped that, as a result of this, complaints about victimization will cease." It is, however, not quite clear whether the Committee regarded victimization as inevitably connected with trade union activities. In some Awards it has been held or assumed that there must be a connection between the two. It was held by Mr. D. G. Kamekar, Member of the Industrial Court, Bombay, in an Award on a dispute between the Khandesh Spinning and Weaving Mills Co., Ltd., Jalgaon and their employees (Industrial Court Reporter, April-June 1948, P. 195) that "the Industrial Court will not set aside an otherwise valid order of discharge and order reinstatement, even when deciding a reference made under section 49A of the Bombay Industrial Disputes Act, unless it appears that the employer is guilty of unfair labour practices or that the order of discharge was a mere cloak and the true reason was victimization of the employees concerned for their trade union activities." In an Award given by Mr. S. C. Chakravarty on an industrial dispute between the Imperial Bank of India, and its employees, which was published in the *Calcutta Gazette* as part of an order of the Government of West Bengal, dated the 22nd December 1948, the learned Adjudicator said, "Victimization clearly indicates punishment for trade union activities." In another Award, made by Mr. R. Gupta on the industrial dispute between the Imperial Bank of India, and its employees, and published in the *Calcutta Gazette*, dated the 6th September 1947, as part of an order of the Government of West Bengal, dated the 4th August 1947, the learned Adjudicator said, "I was under the impression that the Association wished to place before me the cases of employees who had either been dismissed or transferred because of the part taken by them in the strike. This is what I clearly understood by the word 'victimization.'" He, however, further said that he would be prepared to interfere if the action taken against the employee "was unjust and due to ulterior motive." This was actually done in the case of one J. N. Gupta who had been transferred from Kanpur, and the Adjudicator directed that he should be transferred back to Kanpur if he wished. Though J. N. Gupta was Joint Secretary, Kanpur Branch Association, the order was not based on his conduct, as such Joint Secretary but because the Bank had been unable to show why it had been necessary to transfer him when there were men among senior clerks available at Kanpur. In another Award, dated the 27th March 1948 of the Industrial Tribunal, Calcutta, on an industrial dispute between the Hooghly Bank, Ltd., and its employees, which was published in the *Calcutta Gazette* as part of an order of the Government of West Bengal, dated the 5th April 1948, the learned Adjudicator, Mr. M. C. Banerjee, referred to the following observations of croom-Johnson J. In *R.* v. *National Arbitration Tribunal*, ex-parte *Horatio Crowther and Co., Ltd.*: "The real claim was that the alleged reason for their dismissal was not a true one and that they had been 'victimized', *i.e.*, been got rid of because they were members of the Chemical Workers' Union," and the learned Adjudicator observed, "This statement of the learned Judge clearly shows that victimization is a measure taken in retaliation of the employees' union activities." In an Award made by Mr. A. Das Gupta on an industrial dispute between *Messrs. Turner, Morrison & Co., Ltd.*, and one of their employees who had been discharged (published in the *Calcutta Gazette*, dated the 25th

August 1949 as part of an order of the Government of West Bengal, dated the 23rd August 1949), the learned Adjudicator was inclined to give a wider meaning to the expression 'victimization'. He said, "'Victimization' has been defined in an award given by Junab Niwaj Muhammad in the case of *Mazdoor Hargaon* vs. *Arjun Sugar Mill* as whatever injures or illegally affects an employee. In the case of Coimbatore Cement Works, the Adjudicator Sri C. R. Krishnaram, has defined the term as the taking of some action prejudicial to the workers on some pretexts other than the real reason..... I am not inclined to put a narrow interpretation on the terms 'victimization' and 'unfair labour practice'. If there cannot be any victimization or unfair labour practice except in relation to Union activities, employees of a firm who have no Union will not be entitled to any relief under the Industrial Disputes Act, 1947. The result will be that either the employer would try to engage non-Union men or that a non-Union man will be forced indirectly to join a Union. If Industrial Courts refuse to give relief to an employee unfairly discharged simply because there was no Union activities on his part and hence no victimization or unfair labour practice on the part of the employer he will be compelled to join a Union. This will be interfering with the natural rights."

4. It is now clearly established by a consensus of Awards that a Tribunal has power to interfere not only where a workman has been dismissed because of his trade union activities but also where his dismissal is so unjust or improper that some relief is called for in the interests of justice. The word "victimization" has not been defined in any law dictionary which has been referred to before us. According to the Concise Oxford Dictionary, III edition, page 1375, the trade union meaning given to the word "victimize" is, "to make (ring leader, etc.) suffer by dismissal or other exceptional treatment." This does not appear to show any connection between victimization and trade union activities. In Webster's New International Dictionary, II edition, page 2841, "victimize" has been thus defined: "to make victim of; to sacrifice; especially to make a victim of by deception; to deceive; to dupe; to cheat." This definition gives the general meaning of the word "victimize" but does not mention any technical significance attaching to the word. The expression "unfair labour practice" is to be found in section 8 of the National Labour Relations Act, 1935, of the U.S.A. That section mentions five items, at least one of which is not connected with trade union activities, *viz.*, "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act." In "Industrial Organization and Management" by Bethel and others (published by McGraw-Hill Book Company, Inc., 1945) at page 457 the different kinds of practices which have been held by the Board set up under the American Act to be unfair labour practices have been given, some of which, again, are not connected with trade union activities, for instance, discriminating in lay-offs, furloughs, or assignment of work, failure to pay back pay ordered by the Board and not showing a willingness to negotiate during bargaining.

5. In this connection the terms of sub-section (1) of section 101 of the Bombay Industrial Relations Act, 1945, may be relevant. That sub-section is as follows:—

> "No employer shall dismiss, discharge or reduce any employee or punish him in any other manner by reason of the circumstance that the employee—
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> (*a*) is an officer or member of a registered union of a union which has applied for being registered under this Act; or

(*b*) is entitled to the benefit of a registered agreement or a settlement, submission or award; or

(*c*) has appeared or intends to appear as a witness in, or has given any evidence or intends to give evidence in a proceeding under this Act; or

(*d*) is an officer or member of an organization the object of which is to secure better industrial conditions; or

(*e*) is an officer or member of an organization which is not declared unlawful; or

(*f*) is a representative of employees; or

(*g*) has gone on or joined a strike which has not been held by a Labour Court or the Industrial Court to be illegal under the provision of this Act."

It will be seen that clauses (*b*) and (*c*) deal with matters unconnected with trade union activities. It may be that victimization is not for all purposes the same as unfair labour practice or as the practices or acts forbidden under section 101 of the Bombay Industrial Relations Act. There is, however, no reason, in our opinion, why victimization should be specially connected with trade union activities, though, as a matter of fact, probably the largest number of cases of dismissals, etc., with which Industrial Courts and Tribunals are concerned are so connected. It is also undoubtedly true that in the majority of such cases the employer gives a reason for discharge or dismissal, etc., which is not the true reason. In our opinion, the expression victimization should embrace all cases of discharge, dismissal, punishment inflicted on or suffering caused to an employee where such discharge, dismissal or infliction of such punishment or suffering is so unjust that a remedy is called for in the interests of justice between the parties. This is no doubt a wide definition, but it appears to be consistent with the basic meaning of victimization; we are not satisfied that a narrower technical meaning has been evolved during the history of employer-employee disputes and their management or development in the different countries of the world. The Central Government could not also have meant, by the use of the word victimization, any particular kind of discharge or dismissal, etc., for instance, those arising only out of trade union activities. There was no particular reason to mention such cases and leave out other cases of unjustifiable discharge or dismissal, etc.

6. (I) *Allahabad Bank, Ltd.*—Two of the three cases of alleged victimization were heard, *viz.*, those of—

(1) *Satya Prakash,* a clerk in New Delhi office, whose services were terminated on the 3rd May 1949. He was a probationer and the Manager stated that a bad report was received after he had served the Bank for three months. He was absent at the hearing. This does not appear to be a case of victimization and we do not interfere.

(2) *Jeeyalal Sharma,* whose services at the Meerut branch of the Bank have been terminated. This case requires further consideration, and we defer passing orders at this stage.

(II) *Central Bank of India, Ltd.*—

Lashkari Ram Mehta, serving in the Delhi branch of the Bank. His only complaint is that his increment has been stopped. This also has not been shown to be a case of victimization. He has now sent a letter saying that his application may be treated as cancelled. We, therefore make no orders in this case also.

(III) *Bharat Bank, Ltd.*— 697

7. A list of 95 alleged cases of victimization was filed by the Bharat Bank Employees' Union. The following cases arose after 13th June 1949, and we give no directions regarding these :—

No. 1 Hari Kishen Das,
No. 2 S. S. Shetty,
No. 3 R. L. Sally,
No. 4 S. S. Tripathi,
No. 93 G. D. Mathur,
No. 49 Basant Singh.
No. 95 Salekh Chand.

The following eight persons were dismissed but have been allowed to return to the Bank's service. We give no directions regarding these men also :—

No. 42 Roshan Lal Jain,
No. 43 M. K. Sharma,
No. 44 Harnarain Kokcha,
No. 45 Raghbir Singh,
No. 46 Narinder Nath,
No. 47 S. P. Gupta,
No. 48 C. B. Dubey,
No. 49 Basant Singh.

According to Mr. H. L. Parwana, President of the Union, the union which was formed in August, 1948, has the majority of the workmen of the Bank as its members ; the Bank, since its inception in 1944, has dismissed a "record number" of its employees and an abnormal number have been transferred from place to place by way of harassment ; and there have been three strikes, one on the 11th November 1948, after which the Union was recognized by the Bank, the second from the 3rd to the 9th December 1948 and the third from the 9th to the 23rd March 1949. The general attitude of the Bank, according to Mr. Parwana, will be apparent from the following : (1) the President, the Vice-President, the Secretary, the Joint-Secretary, members of the General Council, the Negotiating Committee and the Working Committee of the Union, as well as other active workers of the Union have all been dismissed. Nine persons were dismissed on the 19th March 1949 and 21 on 21st March 1949. (2) There are a large number of cases in which workmen have been transferred from the places where they had been working actively for the Union, merely as a mode of harassment. (3) In certain personal files and letters relating to workmen their trade union activities have been prominently referred to and some letters also contain recommendations that certain workers who have been taking part in such activities should be transferred or otherwise dealt with as a punishment. It was also stated that the persons concerned (except the President) were not given any charge nor were they given any opportunity to explain their alleged misconduct.

8. A large number of employees were dismissed in March 1949. The following two cases arose prior to that month :—

No. 5. *S. N. Khanna.* He was dismissed on the 8th January 1949 owing (it is contended) to his absence from duty during the strike of December 1948. Mr. Vedvyas on behalf of the Bank has contended that he was dismissed because he committed a serious mistake in checking vouchers and he refused to obey an order when called

upon to work in another department. As to the mistake committed he gave an explanation and the dismissal order makes no mention of it. As to his rufusal to obey an order, he seems to have felt that doing the work which he was ordered to do would mean his working in a role inferior to his own. The workman appears to have taken part in the December strike—this has not been denied—and the dismissal order is *prima facie* an unduly harsh order. This case appears in our opinion to be really one of victimization due to the workman's participation in the strike. His refusal to obey an order probably merited some punishment. We, therefore, direct that he should be reinstated but that he would be paid what he would have earned if he had worked from the 1st April 1949. This direction should be given effect to within a month from the date with effect from which this Award becomes operative.

No. 8. *Gursarandas Sharma.* He was dismissed on the 22nd December 1948. He was absent in the proceedings and it does not appear that Mr. Parwana has been duly authorised to appear for him before us. Mr. Vedvyas states that he has not only taken back his security deposit but has secured a job elsewhere; he also says that if Sharma wants to come back, the Bank would take him back as a new entrant. We do not think that this case calls for any direction from us.

9. One case which arose after March 1949 may also be dealt with before we deal with those dismissed in that month:—

No. 7. *Om Prakash Gupta.* He was dismissed in April 1949 on the ground that he scored out certain entries and destroyed a voucher. When called upon to explain his conduct he falsely said that he had acted under his superior's instructions. He was an employee brought by the Treasurer who has replaced him by another man. As he gave a false explanation, the Bank was entitled to get rid of him on justifiable suspicion that this was an attempt at defrauding the Bank. We do not think that this is a case in which we should interfere.

10. As regards the strike which took place in March 1949 Mr. Vedvyas, on behalf of the Bank, gave the following account:

The main strike was between the 3rd and the 9th December 1948. The Provincial Government appointed the District Judge, Delhi, as a Tribunal and, after referring the dispute to him under sec. 10 of the Industrial Disputes Act, prohibited the continuance of the strike under sub-sec. (3) of the said section. Thereafter the work was resumed. Arrears had accumulated; they were cleared except in the Agency Department (to which the persons dismissed mostly belonged) which adopted the tactics of slowing down work. Chauhan (No. 11) wanted 3 additional clerks and additional payment. The clerks were given and the Management agreed to the additional payment provided the arrears were cleared by 21st March 1949. The Union Secretary Bhattacharya, not an employee of the Bank, was arrested by the Police; this was followed by threat of a strike but it did not materialise.

Thereafter on the 9th March 1949 there was a strike of the workmen in the head office; there had been neither notice nor demands before. On the 10th March 1949, after a Circular had been issued, work was resumed but it was accompanied

by slow-down tactics. On the 11th March 1949 the strike was resumed. The Bank then applied to the District Judge for permission to dismiss 8 persons under section 33. The workmen said that the strike was not concerned with the dispute before the District Judge and the District Judge held on the 18th March 1949 that section 33 did not apply and rejected the application.

On 18th March 1949 the Bank by a Circular called upon its workmen to resume work on the next day. On 19th March 1949 work was not resumed. Thereupon notices were issued to individual workers to show cause by 3 P.M. on the same day why they should not be dismissed. The notices were not accepted. No cause was shown. On the same day orders were passed against 9 persons (Nos. 10—M. C. Vashisht, 11—A. S. Chauhan, 13—Yudhister Dev, 14—K. K. Banerji, 15—D. P. Bhatia, 16—R. L. Goga, 20—Kali Ram Jain, 21—M. K. Jain and 22—Tara Chand) that as they had refused to accept the notices or to give explanation of their conduct they were dismissed.

Similarly 21 more were dismissed on 21st March 1949.

The persons dismissed in March 1949 were guilty of (1) illegal strike and (2) refusal to work, contravening bye-laws 9 and 10 of the Bank and rule 5 of its Leave Rules. The Bank, therefore, was justified in dismissing them. The words "in breach of contract" in section 23 of the Act were also relied upon. Section 23 (*b*) and section 24 (1) (*ii*) were also relied upon and it was pointed that (*a*) the proceedings before the District Judge were pending and that (*b*) Government had on 8th December 1948 prohibited under section 10 (3) the continuance of the existing strike. Between 9th December 1948 and 9th March 1949 no fresh demands were presented; the original demands comprised all possible demands. Therefore the March strike should be deemed to be a continuation of the December strike as a form of pressure exerted to obtain the original demands.

By Bank's Circular of the 10th March workmen were told to resume work; in their Circular of the 18th March it was pointed out that their demands had gone to the Director of Indian Industries and Labour and they were asked not to continue the strike and told that if they did they would become liable for disciplinary action against them. On the 19th they were told to show cause by 3 P.M. on the same date why they should not be dismissed for absence from duty and for instigating others to remain absent from work. Throughout the period all were attending the Bank but doing no work.

Head clerk Bhandari was ordered to serve the notices; he reported that they refused to take them. On the same day (19th March) in the evening the orders of dismissal were passed. As to Parwana a notice was served on him on the 21st he said in explanation that the workmen were on a legal strike, that the demands had been sent to Government and that there had been no instigation. He was dismissed on the 21st March. On the 21st 21 more were dismissed; in their cases no 'show cause' notices had been served.

Out of the dismissed men 8 have come back.

The first batch of 9 were Nos. 21, 16, 22, 14, 15, 11, 10, 13, 20, and the second batch of 21 were Nos. 44*, 45*, 24*, 46*, 27, 26, 43*, 25, 9, 30, 19, 42*, 32, 17, 23, 47*, 48*, 31, 28, 49*, 29 in the Union's application.

After the dismissals the Union officials went to the local Government for redress and for prosecuting the Bank officials, but to no effect. They then sent a threat that an "atom bomb" would be thrown. This was a letter sent to Sheth Dalmia, dated 11th April 1949 signed by Bhattacharya as Secretary for the Union, in which the most scurrilous remarks were made about Sheth Dalmia

and an "open letter" was enclosed asking that the dismissed men should be taken back by 4 P.M. on 12th April 1949, otherwise the publication of the scurrilous remarks was threatened; the threat was carried out to the Bank's great detriment.

11. Mr. Parwana's reply was as follows. Bhattacharya was compelled to resign from the Union on the 29th May 1949. The delay in taking such action was due partly to Mr. Parwana's absence owing to family troubles and to an enquiry into Bhattacharya's conduct that had to be made. The union thus dissociated themselves from Bhattacharya's letters and condemned his action. Mr. Parwana further contended that as for Mr. Vedvyas's arguments based on sections 23 (*b*) and 24 (I) (*ii*) of the Act they were fallacious, for the proceedings which were pending before the Tribunal related to a different and unconnected strike; and as regards the argument based on section 24 (1) (*ii*) of the Act, again, he pointed out that Government's Order dated the 8th December 1948 related to an earlier strike and contended that this argument too, was unsustainable. According to him the March strike was based, at least largely, on a new set of demands which were not filed before the Tribunal. We saw those demands and they seem to us to differ in some material respects from the demands made in the earlier strike. Those demands had been presented from time to time to the Bank; this is clear from the summary of the correspondence between the Bank and the Union which has been filed before us.

12. The alleged infringement of the Bank's bye-laws and rules may be dealt with first. Mr. Vedvyas relied on bye-laws 9 and 10 and rule 5 of the Leave Rules. The 2 bye-laws are as follows:

> *Bye-Law 9.*—An employee may resign from the service of the Bank by giving one month's notice.
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> *Bye-Law 10.*—In the event of an employee absenting himself from duty without leave or leaving the service of the Bank suddenly and abruptly without giving the notice required in Rule (9) above, he shall be liable for forfeit not only the balance in his security deposit account but shall also be liable to pay to the Bank his salary for the period of the required notice.

In this case bye-law 9 has obviously no application, absention from work not being the same as resignation; nor does bye-law 10 appear to apply, as no action was taken thereunder and this was no mere case of absence from duty without leave or leaving the Bank's service. Leave rule 5 is as follows: "An employee remaining absent from duty without permission whether in continuation of leave already granted or otherwise, is liable to dismissal". Though this may seem technically to apply, this was not an ordinary case of absence without permission. If there was an industrial dispute underlying such absence, this Tribunal would have jurisdiction to say whether the dismissals were justified or should be interfered with. We would express our general agreement with the following observations of Mr. A. Das Gupta in the Award made by him on an industrial dispute between Messrs. Cox and King's (Agents) Ltd., and their employees (published in the *Calcutta Gazette*, Extraordinary, dated the 8th August 1949 as part of an order of the Government of West Bengal of the same date). "The whole object of the trade union is to carry on collective bargaining and negotiations with employers. And when all attempts fail coercive policy is adopted as a final recourse. Strike is one of these coercive policies. It is a most essential part of the trade union programme. The strike, picketting

and boycott are the coercive policies. Without these coercive policies, which have to be used with utmost vigilance, the Union is defenceless. By striking work the members withdraw from work but insist at the same time upon holding their jobs. This is an essential feature of the strike." In Ludwig Teller's Labour Disputes and Collective Bargaining" (Volume II, p. 754) it has been pointed out that striking employees retain their status as employees under the National Labour Relations Act of the U.S.A., under two circumstances: (1) where they strike in connection with a 'current labour dispute'; and (2) where the strike is the result of an unfair labour practice.

13. In this case it seems to us quite clear that the March strike was not a continuation of the December strike. The industrial dispute that was involved in the strike in December 1948 was referred by the local Government to the arbitration of the Industrial Tribunal at Delhi and thereafter the strike ended. The preceedings went on to March 1949. On the employees going on strike again on March, 9 1949 the Bank made an application to the said Tribunal for permission to take disciplinary action against some of the strikers. The strikers said that the strike was entirely unconnected with the strike of December 1948. The Tribunal's order was: "In view of Mr. Shiv Charan Singh's statement (on behalf of the employees) and the clear statements in the written statement filed on behalf of the employees, Mr. Vedvyas is satisfied that no order is necessary for this Tribunal granting any permission under section 33, the position of both parties now being that the bank will not be contravening the provisions of section 33 of the Act if they take action against the employees on account of any misconduct connected with the present strike. It is not, therefore, necessary for me to grant any permission under section 33 of the Act and the petition is accordingly dismissed." This order is dated the 18th March and it is after this date that the dismissals now under consideration were made. In view of the position taken up by Mr. Vedvyas before the Delhi Tribunal it does not now lie in his mouth to contend that the strike of March 1949 was a continuation of the strike of December 1948. On the evidence, too, we are satisfied that that position was correct.

14. As regards section 23 of the Act the relevant part thereof is: "No workman who is employed in any industrial establishment shall go on strike in breach of contract during the pendency of proceedings before a Tribunal and two months after the conclusion of such proceedings." Mr. Vedvyas has contended that the words "proceedings" must be construed to mean "any proceedings" and that it should not be held to mean only proceedings in respect of the dispute which is the matter in issue in the strike. Mr. Vedvyas's contention now derives support from a recent decision of the Calcutta High Court Criminal Revision No. 623 of 1949 *Pravat Kumar Kar and others*) *V.T.C. parker* confirming the conviction of 11 workmen of the Lloyd's Bank under section 26 of the Industrial Disputes Act by the Chief Presidency Magistrate, Calcutta. The Chief Justice and Mr. Justice Chatterjee who heard the application took the view that the words "in respect of any of the matters covered by the settlement or award", which appear in clause (*c*) but not in clauses (*a*) or (*b*) of section 23, had been deliberately inserted and that they were intended to draw a clear distinction between strikes and lockouts on matters in respect of which an award or settlement had been made and strikes or lock-outs connected with matters not covered by any award or settlement, and that, therefore, the words of clauses (*a*) and (*b*) were intended to cover all strikes or lock-outs relating to industrial establishments which orginally gave rise to the dispute which had been referred to a Tribunal or to Conciliation authorities.

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The main arguments which appealed to the learned Judges were based on the presence in clause (*c*) of section 23, and the absence in clause (*a*) and (*b*) of the same section, of the words " in respect of any of the matters covered by the settlement or award ". The contention of the Advocate-General, that if it had been intended to limit the operation of section 23, clauses (*a*) and (*b*) to strikes arising out of matters pending before the Tribunal, words similar to those found in clause (*c*) would have been added to those clauses, was upheld. Another argument which was adopted in favour of the view taken by the learned Judges was that the object of clauses (*a*) and (*b*) of section 23 was to ensure an atmosphere of calm and peace during an adjudication upon an industrial dispute; " all disputes are forbidden in order to ensure a calm atmosphere for the adjudication upon the disputes which have been referred ".

15. There can be no doubt that the interpretation put on section 23 of the Act by the learned Judges of the Calcutta High Court is entitled to the greatest respect from this Tribunal; but unfortunately we have not both been able to take the same view as the said High Court. While one of us has accepted the reasoning of that Court, the other Member has found himself constrained to take the contrary view mainly for the following reasons.

16. We have to bear in mind that the legislature, by enacting section 23, wanted to curtail the right of workmen to strike a right recognised but sought to be circumscribed also in section 22. Such a provision must be strictly construed and if its language be not unambiguous and be capable of an interpretation in favour of the existing right, such interpretation must prevail over other possible interpretations. The language of section 23 cannot be said to be entirely unambiguous, and in any case certain words like " under the Industrial Disputes Act ", must be inserted in clauses (a) and (b) after the words " proceedings " to bring out their complete and precise meaning. Secondly, certain anomalies would result if the interpretation of the Calcutta High Court is given effect to, for instance in the case before the High Court the accused were found guilty because certain proceedings relating to a dispute in the Lloyd's Bank had been pending; whereas workmen of other Banks, who had also joined in the same sympathetic strike, could not be similarly proceeded against. If the Legislature, in spite of such anomalies, wanted to stop all strikes during the pendency of any proceedings before a Tribunal they would have been careful enough to indicate this, for instance, by adding such words as " whether or not such proceedings relate to the matter in dispute in the strike or lock-out ". As to the argument based on the interests of peace and quiet, it seems a strong thing to say (so long as all strikes are not prohibited), *e.g.*, where there are pending adjudication proceedings regarding the discharge of a single workman, that the whole body of workmen are precluded from seeking to enforce a general demand, whatever be its importance, by means of a strike where other methods are not likely to prove fruitful. If such was their intention, one would expect that in sub-section (3) of section 10 also they would have adopted the same principle and omitted the words " in connection with such dispute which may be in existence at the date of the reference ". In clause (*c*) of section 23 the principle that workmen should be free to agitate matters outside the award by a strike during the period in which the award is in operation has been recognised. If so, the question arises, should not a similar principle apply to clauses (*a*) and (*b*) of section 123 also.

17. In spite of this difference of opinion regarding interpretation of section 23, however, we are both agreed that the employees in question are entitled to

relief in this case. It is to be noted that the dismissals were not made on the ground or footing that the strike was illegal. As in the case of the strike among the employees of the Lloyd's Bank at Calcutta the management could have got the strikes of March 1949 declared illegal; but this has not been done. The notices to show cause issued on the 19th March to the workmen were based on no ground except their absence from duty and instigating others to remain absent from work although in the notice dated the 10th March reference has been made to section 23 of the Act and in the notice dated the 18th March it had been stated that the management considered the strike to be illegal. In the same notice "all those employees who had been ill-advised to go on strike" were called upon to resume duty on the next day. This shows that the authorities were prepared to condone what they considered to be an illegal strike. In all probability the reason why there was no mention of the illegality of the strike in the notice of the 19th March was that on the 18th March the Industrial Tribunal, Delhi, had accepted the statement of the eight men proceeded against under section 33 of the Act that the March strike was different from the strike which was before the Tribunal. No authority except the Calcutta decision referred to above has been cited before us wherein section 23 of the Industrial Disputes Act has been interpreted and a strike based on grounds other than those which had given rise to a dispute pending before a Tribunal has been held to be illegal. The Union's view seems to have been that the strike, being based on new grounds, was a legal strike, and it probably also held such opinion in view of the ambiguity in section 23 of the Act, and that was probably why the notice to show cause was couched in the language already mentioned. If the management had considered the illegality of the strike as important or relevant they would have said so in the notice or would have got the matter put beyond doubt by prosecuting the strikers, or some of them for participation in an illegal strike. If the management had dismissed the strikers on the ground of illegality of the strike, they could also be said to have unfairly shifted the onus of proving the contrary on a large number of workmen; but in any case this is not what they purported to do. We, therefore, cannot attach much importance, on the facts of this case, to the arguments as to the alleged illegality of the strike.

18. In this case the relation between the employers and the employees was seriously strained. The organization of the strike showed that the employees' union was behind it. The attempt of the Bank authorities to get rid of eight of the strikers under section 33 clearly showed how strongly they resented the activities of the Union. Their notice dated the 18th March shows that they were aware that new demands had been presented to the Director of Industries and Labour. In spite of the proceedings pending before the Delhi Tribunal S. N. Khanna and Gurusarandas Sharma had been dismissed on the 8th January and 22nd December respectively; and the summary of the correspondence between the management and the Union shows other cases of alleged unfair labour practice with regard to several workmen. It would have been better had the Union, having taken their grievances to the Director of Industries and Labour, waited for the result. But their patience appears to have been exhausted and they seem to have felt that a strike (which, in their view, was a legal strike) was the only remedy. On the other hand, the management did not take any one of two possible legal steps: (1) to prosecute the strikers or their ring leaders for having participated in an illegal strike or (2) ask Government to refer the dispute to adjudication. Instead of this they preferred, after giving inadequate notices (as will be shown below), to dismiss a large number of workmen, though they were fully aware that what they described as abstention from work and instigation could be more appropriately described as organised

trade union activity. While, therefore, we are unable to approve of the conduct of the strikers, we are also unable, in view of the atmosphere and psychological background which was largely the creation of the Bank authorities, to say that the strike was wilfully brought about for insufficient reasons; and we are also of opinion that in the circumstances of this case the management were not justified in dealing with the strikes merely on the footing of their abstention from duty and instigation of one another and dismissing a large number of them on that ground. We are definitely of opinion that the best interests of the industry cannot be promoted by the kind of action which was taken by the management in this case when there was a strong feeling of grievance prevailing among the members of the Union, though they might have been misguided in some of their activities. In this connection we would refer to the following observations which we have made in our Award regarding certain victimisation cases at Calcutta. "The promotion of discipline among the employees is no doubt very desirable and necessary, but it should not be sought to be achieved by unduly harsh measures or an unnecessary show or exercise of power. In the interest of peace and harmony between the employers and employees it seems to us that the bitterness and sufferings caused by the happenings of October 1948 should be now removed as far as possible". That a conciliatory policy should be pursued as far as possible and that any action by an employer which might lead to avoidable bitterness should be withheld when possible is indicated in the Act itself, *e.g.,* in the provision regarding prosecution for illegal strikes or lockouts, regarding which the power of initiating a prosecution has not been left to any party but has been reserved to the appropriate Government. In making the directions that we give below we have borne in mind the principles and considerations mentioned above.

19. Mr. Vedvyas also contended that the men discharged or dismissed by his Bank were no longer workmen as defined in section 2 (*s*) of the Act. That definition is as follows:—

> "'Workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air service of the Crown".

We are unable to accede to this contention. In the first place there can be no doubt that in the present case the dispute had arisen as soon as the strike had commenced, and the ex-employees under consideration were dismissed or discharged during such strike. In our opinion, however, the material question we have to deal with is whether there is any industrial dispute concerning these men and not whether as the present dispute can be said to arise only after the discharge the ex-employees concerned, they can or cannot be said to have been discharged "during that dispute" and to be still workmen as defined in the Act. The expression "industrial dispute" has thus been defined in clause (*k*) of section 2 of the Act:

> "'Industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person".

It will be seen that whereas the earlier part of the definition speaks of *workmen* the latter part speaks of the connection of the "dispute or difference" with the employment or non-employment or the terms of employment or with the conditions of labour *of any person.* If, therefore, a dispute is raised by a of workmen relating to the employment by their employers of a person who is not yet an employee but whom they seek to get admitted into the employers' service, that would be valid industrial dispute within the meaning of the definition. The view that we are taking is supported by a decision of the High Court of Calcutta (which was upheld in appeal) in which Mr. Justice Sen observed: "Now an industrial dispute need not be a dispute regarding the employment or non-employment or terms of employment or the conditions of the labour of the workmen. Section 2 (*k*) is quite clear on this point. It is true that the dispute must be between employers and workmen but it may relating to employment or non-employment or the terms of employment or conditions of labour who are not workmen. The words in the last portion of section 2 (*k*) are "or any person", whereas in the first (part) of the section the word used is 'workmen'", (Judgment dated September 4, 1947 *in Birla Bros.* v. *Employees' Union*). The case of *R.* v. *National Arbitration Tribunal* (All England Law Reports, 1947, Vol. 2, page 693) dealt with a case in which "workman" was defined as "any person who has entered into or works under a contract with an employer," and it was submitted by counsel for the company that as at the date of the reference due notice had been given to the workmen to terminate their employment and their employment had thereby been terminated, there would be no trade dispute to refer, because there could not be a dispute or difference on any subject between those employers and workmen as the workmen were not in the service of the employers; and he reinforced his argument by reference to the definition of "workman" which he submitted contemplated an existing contract of service so, as he put it, that there must be some contract on which the reference could "bite". Lord Goddard, C.J., said that he was unable to agree with this contention observing, "If effect were given to it, it would mean that any employer, or indeed, any workman, could nullify the whole provisions, of the Order and the object of the regulation under which it was made by terminating the contract of service before a reference was ordered, or even after the matter was referred but before the Tribunal considered it. It is, in my opinion, quite clear that there was here a trade dispute existing at any rate down to the date of the dismissal of the workmen. That is not an issue, and whether the workmen were discharged for the *bona fide* reason that their employers were not willing to accede to their demands is, in my opinion, immaterial. If there was a trade dispute it can, in my opinion, be referred to the Tribunal whether or not the dispute has resulted in workmen being dismissed or in their having discharged themselves."

20. *In Western India Automobile Association* v. *the Industrial Tribunal, Bombay,* the Federal Court, after referring to the definition of "Industrial dispute" in the Act, considered the question whether the said definition includes within its ambit a dispute in regard to reinstatement of dismissed employees. It was observed, "Reinstatement is connected with non-employment and is therefore within the words of the definition. It will be a curious result if the view is taken that though a person discharged during a dispute is within the definition of the word 'workman', yet if he raises a dispute about dismissal and reinstatement, it could be outside the words of the definition 'in connection with employment or non-employment.' 'Any dispute connected with employment or non-employment' would ordinarily cover all matters that require

settlement between workmen and employers, whether those matters concern the causes of their being out of service or any other question ".

21. Mr. Vedvyas has also relied on the words "in breach of contract" in section 23. But the contract between the Bank and its employees must have impliedly contained the right of the latter to strike for legitimate reasons. In the context of the circumstances, therefore, we regard this contention as without substance.

22. The Bank is not a "public utility service" and so the prohibition contained in section 22 and the requirement of giving notice to be found therein will not apply. It seems to us that demands on which the strike was based were not unknown to the management. The fact that the President, the Vice-President, the Secretary, the Joint Secretary, members of the General Council, the Negotiating Committee and the Working Committee of the Union, as well as the strike Commander at the Head Office (O.P. Kalra) were dismissed, within the space of three or four days, and very shortly after the Delhi Tribunal had dealt with the Bank's application under section 33, all points in connection of the dismissals with the affected employees' trade union activities. On the 19th March 1949 the following 9 persons :

No. 10 M. C. Vashist,
No. 11 A. S. Chauhan,
No. 13 Yudhisthar Dev,
No. 14 K. K. Benerji,
No. 15 D. P. Bhatia,
No. 16 R. L. Goga,
No. 20 Kali Ram Jain,
No. 21 M. K. Jain, and
No. 22 Tara Chand Jain

were called upon to state by 3 P.M. on the same date why they should not be dismissed for abstaining from their duty and for instigating others to abstain from work. We consider that the time given was inadequate and that this also vitiates the dismissal orders which were passed on the same day, the 19th March 1949.

23. As to No. 9 H. L. Parwana, a notice was served on him on the 21st March requiring him to explain his conduct on the same day. He said that the strike was not illegal and that there had been no instigation. He was dismissed on the same day. In our opinion the time given for explanation was insufficient and this vitiates the dismissal order.

24. On the same day, 20 others were also dismissed. They are the following :—

No. 17 G. L. Seth,
No. 23 Sampat Singh,
No. 25 P. S. Nigam,
No. 27 Lekh Rah,
No. 29 Shadi Ram,
No. 31 Rup Singh,
No. 42 Roshan Lal Jain,
No. 44 Harnarain Kokcha,
No. 46 Narinder Nath,
No. 48 C. B. Dubey,
No. 19 Vireder Kumar Jain,

No. 24 Pritam Singh,
No. 26 Guru Datt Gaur,
No. 28 Kishanlal,
No. 30 Khem Chand,
No. 32 Gian Prakash Jain,
No. 43 M. K. Sharma,
No. 45 Raghubir Singh,
No. 47 S. P. Gupta,
No. 49 Basant Singh.

Of these the last eight have returned to the Bank. Except for those eight, in whose cases no findings or directions are necessary, we hold that the remaining employees who were dismissed on the 19th and the 21st March 1949 were victimized. We set aside their dismissal orders and direct that they shall be reinstated in their former places within one month from the date on which this award comes into operation. In view of our finding that we did not approve of their conduct in not awaiting the result of the presentation of their demands to the Director of Industries and Labour we do not think that we would be justified in directing that they should be paid their full pay and allowances up to the date of their reinstatement. We direct that each of them shall be given, within one month from the date on which this Award becomes operative, such pay and allowances as he would have been entitled to, but for his dismissal, during the three months immediately proceeding the date of his reinstatement.

25. In giving the above direction regarding reinstatement we have given due consideration to Mr. Vedvyas's objection to these men's reinstatement, on the ground that they had sent the scurrilous "atom bomb letter" to Seth Dalmia and that men who were capable of such conduct do not deserve to be reinstated. The said letter was no doubt couched in intemperate and even insulting language; it alleged certain facts against Seth Dalmia, but we do not think that it is our business to go into the question of the falsity or truth of the said allegations. Mr. Vedvyas insisted that the Tribunal "must take evidence" regarding the dissemination of the said letter through the union members and the use of the union funds in printing, and publicising it, but we do not think that such a course would have been helpful. So long as Bhattacharya was Secretary of the Union he may have utilized the Union's funds in connection with the letter and he may have found willing members to distribute copies of it to the public. But it is far from clear to us that Bhattacharya was authorised by the Union to send and publish the letter, there being apparently no resolution of the Union on this matter just as there is a resolution repudiating and condemning what he had done. It is, of course, just possible that this resolution, which was apparently not communicated to Seth Dalmia or the Bank, was a piece of make-believe and an attempt on the part of the Union to provide themselves with a defence in the event of the matter going to a Court of law. We do not, on the whole, think that there is any substance in Mr. Vedvyas's argument based on the letter under consideration and we hold that the general rule that a victimized employee should be reinstated should be applied in these cases.

26. Some more cases remain to be considered. We except those cases in which arguments could not be heard or fully heard during our last visit to Delhi.

No. 12. *D. P. Burman.*—He was Joint Secretary of the Union and took part in the strike. On the 23rd March he was asked to show cause by "1 P.M., tomorrow" why he should not be dismissed for abstaining from work. He wanted more time as he got the notice at 1-30 P.M., on the 24th March. Time being given he said that the strike was a justifiable strike and that he had remained away from work as the Bank had called the police on the 21st March and threatened the workmen.

No. 33. *Yog Raj Shah.*—He took part in strike and his explanation was, "I came out at the call of the Union in protest against the calling of the police." Mr. Vedvyas said that he was an officer, having been given a power of attorney with an officer's powers and having been sent to Rawalpindi as Assistant Manager and thereafter kept as a Relieving Officer. It was, however, admitted that he was actually working as a clerk when he was dismissed.

27. Both these cases also appear to be cases of victimization. We give directions in their favour as in the cases of the other dismissed clerks who have been ordered to be reinstated.

No. 18. *Om Prakash Kalra.*—He appears to have been made the Strike Commander at the Head Office. He was appointed on the 11th June 1948 as a probationer. The allegations against him are that he applied for and got sick leave several times, that on more than one occasion he was seen sitting in the Tribunal or a restaurant during such leave; that he used to produce medical certificate from an unregistered practitioner; that he used to be irregular in attendance and to take leave on false pretexts, and that, therefore, his confirmation had to be postponed. It is also alleged that once he, along with others, abused and mobbed a peon of the Bank, snatching away his books and papers and cutting the peons' cycle tyre; that on another occasion he threw stones at a car belonging to the Bank; and that when he was transferred to the Chandni Chowk branch he did not go there, saying that he had fallen ill. A formal charge was made against him, to which he replied that the allegations made against him were false; evidence was recorded against him and he was discharged.

28. Mr. Parwana says that all this is manufactured evidence, as Kalra was an important and active member of the Union. He also points out that in his explanation he denied all the charges, that witnesses were examined against him behind his back and that the medical practitioner who gave him certificate has also certified in Mr. Parwana's own case, when the certificate was accepted.

29. Mr. Vedvyas states that as he was a probationer he could have been discharged even without notice and formal proceedings. In our opinion it would not be safe to regard the allegations made against Kalra as reliable and that for three reasons: (1) though exception is now being taken to the kind of medical certificate he produced, the Bank appears to have accepted it and granted him leave more than once, and it is not clear that he deliberately took leave on false pretexts; (2) when witnesses were examined by the management the evidence does not appear to have been taken in his presence and he was given no opportunity of cross-examining the witnesses; and the peon's statement against him and an allegation that he threw stones at the Bank's car should not have been as lightly accepted as they appear to have been; and

(3) his omission to go to the Chandni Chowk may have been the result of his having really fallen ill; and in any case it was not sufficient to justify his discharge. We are of opinion that as no allegation has been made against his work or efficiency the postponement of his confirmation and his discharge must be attributed, at least mainly, to the prominent part he took in the strike and this must be regarded as a case of victimization. We direct that he shall be reinstated and confirmed within one month from the date on which this Award comes into operation and that he shall be paid, within the same period, such pay and allowances as he would have been entitled to, but for his discharge, during the three months immediately preceding the date of his reinstatement.

(IV) *Punjab National Bank, Ltd.*—

30. *R. C. Thukral,* dismissed from the Meerut branch in 1948. It seems that he was given a power of attorney under which important powers and responsibilities were entrusted to him, including the power to advance the Bank's money, buy silver and gold for the Bank, invest its money, etc. We also found that as a matter of fact he was discharging such duties as removed him from the scope of the definition of "workmen" in the Act. There may be cases in which a Bank, as a preliminary to the dismissal of a clerk, has adopted the expedient of giving him a similar power of attorney or of appointing him as an Assistant Manager for a few days. It would, in our opinion, be necessary to see whether in such a case the incumbent remained to all intents and purposes in the position of a clerk at the time of the termination of his service. We were satisfied that in this case Mr. Thukral was not doing clerical work when he was dismissed. In view of this conclusion we felt, at the time of the hearing, that this was not a case within our jurisdiction. We have, however, since arrived at the view, on the considerations set forth in paragraphs 19 and 20 above, that this case needs further consideration, and we, accordingly give no directions at this stage.

Parshottam Das, clerk, Chandni Chowk Branch, Delhi, dismissed on the 15th July 1949. In our opinion cases of dismissals, discharge or other modes of punishment which have arisen subsequently to the 13th June 1949 but in respect of which no applications under section 33 of the Act have been filed are not matters into which we have jurisdiction to inquire. All that section 33 gives us power to do is to give "express permission in writing" to the Bank concerned to enable an employer to discharge, dismiss or otherwise punish any of his workmen concerned in the dispute before us (except for misconduct not connected with such dispute) during the pendency of the proceedings. It is not for us to initiate proceedings under section 31 in such cases (see section 34). Matters relating to dismissals, etc., which have arisen subsequently to the 13th June 1949 cannot form part of the dispute referred to us, not being matters which had arisen at the date of the reference nor can it ordinarily be said that the emergence of such a case after the said date must have been apprehended by the date of the reference. Such a case would of course fall within our jurisdiction if an employer had given notice of a contemplated discharge, etc., prior to 13th June 1949

even if the said discharge, etc., took place after the said date; for in such a case such discharge, etc., could be regarded as "apprehended" at the date of the reference. We do not interefere in this case.

Pateshwar Singh.—Peon, Central Office, discharged on the 1st August 1949. As the discharge was subsequent to 13th June 1949 we have no jurisdiction.

Swarn Singh.—Godown Keeper, he was discharged on 25th July 1949. For the same reason we cannot interfere.

Dilip Singh.—Manager at Branch Office at Pultighar, Amritsar. He received a notice on the 5th August 1949 and his services were dispensed with later.

Shankar Das Sekri.—Godown Inspector, Central Circle, Head Office, Delhi. His service was terminated on the 29th June 1949.

In these two cases also we have no jurisdiction to interfere.

(V) *Gododia Bank, Ltd.*—

31. *Pannalal Sharma.*—was a clerk in the branch at Barabanki. His grievance is that the Bank has not paid him his salary and travelling allowances for 20 days. He contends that by altering the conditions of his services to his prejudice the Bank has infringed section 33 of the Act. It seems that the Bank declined to pay him his salary and travelling allowance after he had resumed duty at Barabanki on the 24th June 1949. We have no jurisdiction to interfere.

(VI) *Central Bank of India, Ltd.*—

32. *J. C. Khanna.*—Clerk at New Delhi Branch, complains that his increment has been withheld. The increment having become due on 1st July 1949 according to the application, we have no jurisdiction in this case.

C. *Cases of alleged victimization heard at Patna.*

33. These matters were heard at Patna on the 26th September 1949.

Bank of Bihar, Ltd.—

The following two cases arose after 13th June 1949 and we have therefore, no jurisdiction to deal with them:—

(1) *Brijmohan Singh.*—dismissed on the 16th July 1949.

(2) *Ram Babu.*—dismissed on the 23rd July 1949. The third case brought to our notice was that of *Jamnaprasad Singh,* who was discharged on the 9th April 1949 for alleged reasons of retrenchment. He says that he was discharged without notice and he wants reinstatement or at least one month's pay in lieu of notice. The Bank says, that he seems to have been given one month's salary and that if it has not been paid it is prepared to pay it. He, however, joined the Bank in 1945 when he was put in charge of a pay office. In 1948 the office where he was working was closed, after which he was given "relief work" at other centres. When that work also stopped he was relieved of his work. This appears to us to be a case of retrenchment necessitated by the

circumstances, and we, therefore, give no directions except that one month's pay and allowances in lieu of notice, if it has not already been paid, shall be paid to him within one month of the date with effect from which this Award becomes operative.

K. C. SEN,
Chairman.

J. N. MAJUMDAR,
Member.

BOMBAY:

Dated the 19th January 1950.

(Vide *Gazette of India*, Extraordinary, dated February 4, 1950, pages 745—764.)

MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 19th February 1950

No. LR-2 (270)/I.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the All-India Industrial Tribunal (Bank Disputes) in the matter of alleged victimization, wrongful dismissal, etc., in respect of Banking Companies in the Province of Bombay :—

BEFORE THE ALL-INDIA INDUSTRIAL TRIBUNAL

(BANK DISPUTES), BOMBAY

ADJUDICATION

BETWEEN

(1) The Bank of Baroda, Ltd., Bombay,
(2) The Habib Bank, Ltd., Bombay,
(3) The Chartered Bank of India, Australia and China, Bombay,
(4) The Hindustan Mercantile Bank, Ltd., Bombay.

AND

(1) Mr. E. G. Pingulkar,
(2) Mr. S. Z. Kadri,
(3) Mr. F. J. Patel,
(4) Mr. D. G. Gokhale.

In the matter of alleged victimization, wrongful dismissal, etc.

Appearances :

Mr. B. K. Daphtary, for the Bank of Baroda, Ltd.
Mr. Tanubhai Desai, for the Habib Bank, Ltd.
Mr. A. C. Beynon, for the Chartered Bank of India, Australia and China.
Mr. N. V. Phadke with Mr. S. S. Dighe and Mr. G. N. Trikannad, for Messrs. Pingulkar, Kadri and Patel.

AWARD 708

Four cases of alleged victimization were set down for hearing at Bombay in December 1949, *viz.*, those relating to (1) E. G. Pingulkar of the Bank of Baroda, (2) S. Z. Kadri of the Habib Bank, (3) F. J. Patel of the Chartered Bank of India, Australia and China and (4) D. G. Gokhale of the Hindustan Mercantile Bank. The fourth case was allowed to be withdrawn and the first having been heard for one day was also allowed to be withdrawn. The third case had come before the Chairman as President of the Industrial Court, Bombay, and as it was alleged that he had given expression to certain views in connection with the case it was considered desirable that it should be heard by some other Member and was, therefore, not heard by him. The only case that was fully argued on both sides was that of S. Z. Kadri of the Habib Bank.

2. The case of the Bank against Kadri was as follows. He was one of the three ledger keepers in the Savings Bank Department of the Bank, where eleven ledgers were maintained. Besides the routine balancing of the ledgers there used to be, once in a month, what is known as surprise balancing, that is, ledgers were assigned to the ledger keepers for balancing on a day which had not been previously fixed for such work. In April ledgers Nos. 1, 3, 5, 7 and 9 had been thus balanced. On the 19th May 1949 the Sub-Agent of the Mohamed Ali Road branch, Mr. Currim, issued orders that ledgers Nos. 2, 4, 6, 8, 10 and 11 were to be balanced by the three ledger keepers of the Saving Bank Department. Ledgers Nos. 6 and 8 were assigned to Kadri, each of the other two also getting two ledgers to balance. Ledger No. 6 related to 297 accounts and ledger No. 8 to 370 accounts. The work of balancing consisted, mainly, in the jotting down of the balances of the accounts in the balance book, adding them up and seeing that the total balance tallied with the balance to be found in the extract book which is kept by the Accounts Department. In case a mistake was discovered the ledger keepers had to see how the mistake had originated and to rectify the same. Ledger keepers, on ordinary balancing days as well as on days when surprise balancing had to be done, did this work side by side with their ordinary work. The Circular referred to above was signed by Mr. Currim at about 10-30 A.M., and must have gone round to the ledger keepers in question including those of the Current Deposit Department. Formerly in the Savings Bank Department for some months two ledgers had been balanced by one ledger keeper and thus the work should not be considered excessive. On the 19th May, however, Kadri and the two other ledger keepers of the Savings Bank Department made an endorsement at the back of the Circular in question that they were "not in a position to balance two ledgers" as ordered. They were thereupon called by an officer named Broker who took them to the Accountant Mr. Desai. Both of them told them that they should finish the work assigned to them on that day. Thereafter Mr. Currim also sent for them and learnt from the other two ledger keepers—Kokatay and Kogalwala—that they had been forced by Kadri to sign the endorsement. He told them to finish the work on that day whereupon Kadri told him that he "did not want to balance two ledgers." Mr. Currim reminded him that they had done similar work in the past and that they would be paid for overtime work if they had to work beyond 5-30 P.M. Thereupon Kadri said that he did not want to earn overtime and that he was not going to sit in the office beyond 5-30 P.M. Mr. Currim stayed in his office till about 6-15 or 6-20 P.M., when he found that Kadri had already left office and that Kagalwala was still working. He went to Kadri's desk and he found that he had not finished even half the work relating to ledger No. 6 and had not taken up the work of ledger No. 8 at all. On the next day, the

20th May, Kadri's explanation for not finishing the work on the 19th May was called for and he was suspended. The explanation which Kadri gave was not found satisfactory by Mr. Currim and Kadri's services were dispensed with by an order made by him on the 23rd May.

3. The case sought to be made for Kadri was as follows.—Formerly each ledger keeper was not given more than one ledger to balance on any day and to balance two ledgers in one day was physically impossible. On the 19th Kadri left office at 6 P.M., as he had urgent work at home. He, however, noted the time of his departure in the muster roll as 5-30 P.M., because one of the officers, Mr. Rajguru, had given instructions that employees should show that hour as the time of departure, irrespective of the time when they actually left the Bank. The whole case of Kadri is given in the explanation that he gave after the 20th May in which it was distinctly alleged that the three ledger keepers had found great difficulties in balancing two ledgers each on one day, that on the difficulties being pointed out to the Management they were promised that an additional clerk would be posted to the Savings Bank Department, that though this was repeated week after week it was never kept, that in spite of difficulties the ledger keepers went on doing the work of balancing two ledgers, that on the 19th May he explained to the officers concerned their difficulties again, that he did the work to the best of his ability and as far as possible on that evening, leaving office at 6 P.M., that he had not the least intention of flouting or disobeying the orders of his superiors and that his desire was to bring home to them the difficulties experienced by the three ledger keepers. The Bank's reply to this explanation was that he had flatly refused to balance the ledgers and flouted the orders of the superiors and that the tone and the language of his letter bespoke impoliteness and insubordination. This, according to Kadri, amounted to taking an entirely unjustified view because all that he had attempted to show in his explanation was that he and his co-workers were balancing the ledgers under very great difficulties, that the Bank had never kept the promise of supplying an additional clerk and that if the management thought that he had flouted the authority he was really sorry for having given them any cause to think so. According to him the action taken against him must be attributed to the active part he took in the affairs of his Union; otherwise the extreme step of terminating his services would not have been taken by the management.

4. On behalf of the Bank it was pointed out that certain statements made by Kadri in his evidence were incorrect, for instance, when he applied for an appointment in the Bank he had stated wrongly that he had business at Ahmedabad, when, as a matter of fact, he was doing business at Bombay, and once he had sent his resignation for alleged reasons of health, when he stated in his evidence that his reason for resigning his post was his intention to take up independent business. It was also pointed out that the reason he gave in his evidence for leaving the office at 6 P.M., on the 19th May was that he had urgent work at home, while neither in his letter of explanation nor in the application made on his behalf has it been stated that that was the reason why he had left office at that hour. It was suggested that this explanation was an afterthought.

5. On the other hand, several statements have been made by Mr. Currim which, according to Mr. Phadke who appeared for Kadri, were either deliberately false statements or grossly inaccurate allegations. Mr. Currim said that on the 19th May he kept a watch on the movements of the ledger keepers and noticed Kadri leaving office at 5-30 P.M., and that half an hour later he himself saw that not even half of the jottings of ledger No. 6 had been written

down. This statement is inconsistent with what was stated in his letter to Kadri, dated the 20th May, namely, that he had been observed by Mr. A. C. Broker on the 20th that he had not completed ledger No. 6. Here there was no statement that he himself had seen ledger No. 6 and that this inspection had been made on the 19th and not on the 20th May. Secondly, the case sought to be made out in the written statement of the Bank was that on the 19th May not only the jottings but also the totalling and balancing had to be done on the same day, while in the evidence given by Mr. Currim it was stated that only jotting of the two ledgers had to be done on that day. This is a patent incongruity and Mr. Currim has not been able to explain it. He has admitted that Mr. Bijoor, Deputy General Manager of the Bank, who signed the written statement had got all the information regarding this case from him and from the relevant papers. Thirdly, according to Mr. Currim he signed the Circular on the 19th May at about 10-30 A.M., and the practice of the ledger keepers was to start making the jottings in the morning, correcting some of them later on if any transactions relating to the jottings already made took place on that day. On the 19th May there was such a transaction, *viz.*, a debt of Rs. 195 relating to ledger No. 6, the hour at which the voucher relating to the transaction was posted being shown as 3-30 P.M., and the folio number being given as 53. There can be little doubt that in the course of the jotting that folio would be reached before 3-30 P.M., if the work of jotting had commenced in the morning, and that, therefore, according to the practice stated by Mr. Currim, the entry made in ledger No. 6 relating to the relevant account would be found scratched out and corrected. But, as a matter of fact, it is found that none of the jottings made relating to ledger No. 6 were scored out on the 19th May. According to Kadri he received the Circular at about 3 P.M., and he began the work of jotting at about 5 P.M.; this statement accords more with the facts than the case sought to be made out on behalf of the Bank. Fourthly, Kagalwala has said that on the 19th May he stayed in the office till about 7-30 P.M., though he wrote 6 P.M., as time of departure on the muster roll. Mr. Currim himself said that he saw him working till 6-20 P.M., yet we find that the time of Kagalwala's departure given on the muster roll is 6 P.M. Both Kadri and Kagalwala (the latter having been called as witness of the Bank) have stated that Mr. Rajguru had told them to show an earlier hour as the time of departure. This hour, according to Kadri, is 5-30 P.M., and according to Kagalwala 6 P.M. Most of the entries in the muster roll show 5-30 P.M., as the time of departure of the clerks. This renders the statement of the two ledger keepers very probable that they were instructed by sombody in the office to note an earlier hour than the actual time of departure in the muster roll. If that was so, it is extremely probable that Mr. Currim must have known that such instructions had been given. Mr. Currim, however, has said that he was unaware of any such instructions having been given. Fifthly, according to both the ledger keepers who were examined the management had promised an additional hand for the Savings Bank Department to assist the work of the three ledger keepers, there having been formerly five ledger keepers in the department. This was denied by the Bank but though this statement was made expressly in Kadri's explanation when he was called upon to explain his conduct, in the reply given by the Bank there is no mention or denial of the statement. It has, further, been admitted by Mr. Currim that formerly up to about December 1948 the ledger keepers used to be given only one ledger to balance and that thereafter each of them had to do work in respect of two ledgers, when the number of ledger keepers was reduced from 5 to 3. It seems very likely that there were protests from ledger keepers and this is rendered more probable by the fact that on the 19th May the three ledger keepers signed an endorsement stating that they would not be in a position to balance two ledgers each.

Kagalwala who, as we have already stated, was examined on behalf of the Bank, also has spoken about the promise made by the Bank to supply an additional hand. It seems to us extremely probable, in view of these circumstances, that such a promise was made by the Bank. Sixthly, according to Mr. Currim both Kokatay and Kagalwala told him on the 19th May that they had been forced by Kadri to sign the endorsement and that he took a serious view of the matter; yet no mention of this matter is to be found either in the Bank's letter addressed to Kadri on the 23rd May or in the Bank's written statement, and the action taken was not based on this ground. It seems probable, therefore, that there is no foundation for the statement made by Mr. Currim on this point. Seventhly, Mr. Currim has said that he had no knowledge of the part taken by Kadri in Union activities. If he found both Kokaty and Kagalwala alleging that they had been forced by Kadri to sign the endorsement it would be extremely probable that he would enquire how Kadri had come to acquire so much influence over them, and he would at least suspect that this influence was derived from his connection with the Union's activities. Kadri's connection with the Union has not been denied, and it seems very improbable that he did not know of this connection. Eighthly, Mr. Krishnamurthy, an Assistant in the Indian Bank, Bombay Branch, who was examined on behalf of the Bank, has stated that usually in his Bank the balancing work starts at 3 or 4 P.M., and goes on till 6 P.M. It seems highly probable, that such was the practice in the Habib Bank also; this seems to be indicated by the small number of scorings or scratchings in the jottings in such ledgers that were balanced as have been examined by us. The statement of Mr. Currim that this work begins from the morning thus appears to be somewhat improbable. Ninthly, Mr. Currim had said that when he went to inspect Kadri's work on the 19th May he found that not even half of the ledger No. 6 had been written. On looking at the jottings made in the said ledger, it is however, found that all of them are in Kadri's handwriting and it seems, therefore, that Kadri when he left office had finished all the jottings in that ledger, though Kadri seems to have adopted the Bank's statement for his own purpose, *viz.*, in order to show that the work was excessive. It seems very unlikely that Kadri, who received the letter by which he was suspended and whose explanation was called for on the morning of the 20th, did any work on ledger No. 6 on that day.

6. The Bank has called two Assistants, one from the Central Bank of India and the other from the Indian Bank, Bombay Branch, to show that the work assigned to the three ledger keepers was not excessive. The Assistant of the Central Bank had stated that the practice in his Bank is to give two ledgers to each ledger keeper to balance, while the Assistant of the Indian Bank has stated that in his Bank only one ledger is given to a ledger keeper. It has been admitted that from about December 1948 two ledgers began to be given to each ledger keeper and that the number of ledger keepers was also reduced about the same time. We have already stated that this would normally evoke protests from the ledger keepers; and it is, therefore, very probable that in order to keep them quiet the Bank promised that one more hand would be given to assist them. If such promise was not kept that would constitute a legitimate grievance for the ledger keepers. If that was so, the case set out in Kadri's explanation and the case sought to be made out in the statement of the Federation of the Bank Employees, appears to us extremely probable. Of the two versions we would regard this case as the true one because otherwise it is difficult to account why all of a sudden Kadri would decide to flout the authority of the management and not to do the work which he had been doing regularly in the past. The case for the Bank is based on the argument that the balancing work was part of the normal duties

of a ledger keeper and that as the work that was assigned was not done it constituted disobedience on the part of Kadri. But as we have already stated, the case which was set out in Kadri's explanation appears to be true and should have been duly considered by the Bank. That was not done, and it seems to us that the charge against him of deliberate or wilful disobedience and impoliteness has not been substantiated. In spite of the apology given by Kadri in his letter that apology was not accepted by Mr. Currim. That the endorsement which was signed by the three ledger keepers was not liked by Mr. Currim is shown by the fact that he scored out in red pencil Kagalwala's signature himself. That being so, it seems unlikely that he did not enquire of Kadri's connection with the Union or that he did not know it. According to both Kadri and Kagalwala, after two ledgers began to be given to them they could not finish the work on the first day and used to come early on the next working day to complete the work. It seems to us that this is very probably what used to take place. If Mr. Currim found out even on the morning of the 20th May that Kadri had not finished his work and if he wanted to use it as a pretext, he would certainly give the letter of 20th May to Kadri as soon as, or very shortly after he appeared at the Bank on that day. In our opinion the discharge of Kadri was not really for not finishing the work but must have been based on ulterior reasons, and this, therefore, is a genuine case of victimization. The *mala fides* of the Bank is shown in paragraph 5 of its written statement which was signed by Mr. Bijoor, who, according to Mr. Currim, fully knew the practice obtaining in the Savings Bank Department. There a deliberate attempt has been made to suggest, contrary to what seems to have been the practice, that not only jottings but also the work of totalling and the comparing of totals was to be done on the first day. Again, at the hearing it was said that even if Kadri was reinstated he might be one of those who would have to be retrenched by the Bank. Such a statement was unnecessary for the purposes of the hearing and suggests a distinct animus against Kadri on the part of the Bank authorities.

7. It was suggested that this was a case of discharge under standing order No. 20 for which no elaborate procedure, as laid down in the case of misconduct, has been prescribed and that the Tribunal has no jurisdiction or right to go elaborately into the facts. We cannot accept this argument, for the Tribunal has to see whether the discharge is a case of just or unjust discharge, that is, one justified by the facts. It seems to us that in this case the proper order would be that Kadri should be reinstated with effect from the date on which he was discharged and that he is entitled also to such emoluments as he would have earned if he had not been discharged. We direct accordingly.

K. C. SEN,
Chairman.

J. N. MAJUMDAR,
Member.

BOMBAY,
23rd January, 1950.

S. C. AGGARWAL, *Dy. Secy.*

(Vide *Gazette of India*, Part I, Section I, dated February 18, 1950, pp. 242—245.)

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MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 7th February 1950

No. LR-2 (271)-I.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the All-India Industrial Tribunal (Bank Disputes) in the matter of alleged victimization, wrongful dismissals, etc., in respect of Banking Companies in the Uttar Pradesh.

BEFORE THE ALL-INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES), BOMBAY

ADJUDICATION

BETWEEN

Central Bank of India, Limited,
United Commercial Bank, Limited,
Calcutta National Bank, Limited,
Punjab National Bank, Limited,
Allahabad Bank, Limited,
Central Calcutta Bank, Limited,
Bharat Bank, Limited,
Hindustan Commercial Bank, Limited,

AND

Their workmen.

In the matter of alleged victimization, wrongful dismissal, etc., in the United Provinces.

Appearances :—

Mr. B. N. Khanna, Advocate, with Mr. H. C. Captain, for the Central Bank of India, Ltd.

Mr. D. R. Patney, for the United Commercial Bank, Ltd.

Mr. B. N. Khanna, Advocate, with Mr. Mitra, for the Calcutta National Bank, Ltd.

Mr. R. N. Seth, for the Punjab National Bank, Ltd., and the Bharat Bank, Ltd.

Mr. B. N. Khanna, Advocate, for the Allahabad Bank, Ltd., and the Hindustan Commercial Bank, Ltd.

Messrs. J. N. Mehrotra, K. C. Gupta, A. C. Kakar, Harmangal Prasad, S. D. Misra, Padamchand, K. N. Mehratra, Hukumchand and R. M. Tandon, for the U.P. Bank Employees' Union.

AWARD

The Cases dealt with in this Award were heard at Lucknow from the 20th December 1949 to the 24th December 1949.

Central Bank of India, Ltd.— 7 14

There were five cases in none of which any order is called for. In the case of *Tapeshwari Prasad* on materials having been furnished, Mr. Mehrotra on behalf of the U.P. Bank Employees' Union did not press this case, and in two other cases, *viz.*, those of *Balkrishna Aurora* and *Ram Autar*, the dismissals took place after the 13th June 1949. In the case of *Kadam Singh*, Chowkidar, the demand has been withdrawn, which was also done in the case of *K. S. Srivastava*, on his dues being paid by the Bank.

United Commercial Bank, Ltd.—

The two cases of *Nanhey*, Chowkidar and *D. L. Kulshrestha* are cases of wrongful transfer and dismissal which admittedly took place after the 13th June 1949 and, the Tribunal therefore, is not competent to make and does not make any order.

The two cases of *Lalu Singh* and *Rama Nath*, who were Chowkidars of the Kanpur branch of the Bank, are taken up together. Lalu Singh was appointed on 9th July 1945 and Rama Nath on 14th March 1945. They were dismissed on the 21st February 1949 after payment of a month's salary in lieu of notice. The Bank's case against these two persons is as follows : Rama Nath left the station and absented himself without permission in August 1948 for four days. He arranged with Lalu Singh to get him marked present in the Attendance Register. When this fact came to the knowledge of the Manager he made enquiries from Lalu Singh but he made a false statement that Rama Nath had been on duty. Balak Ram, another Chowkidar, stated that Rama Nath had left the station on the 6th August 1948 and his statement was corroborated by the Jamadar and other peons. The Bank was satisfied on enquiry and decided to dismiss both of them for their irresponsible and dishonest conduct, but it could not do so on account of the limitations imposed by the U. P. Government by the Labour Department Orders, No. 4692-(S.T.)/XVIII-142 (S.T.)-1948, dated 31st July 1948 and No. 5890-(S.T.)/XVIII-142 (S.T)-1948, dated 23rd September 1948, under which no Bank employee in the U.P. could be dismissed or discharged without the express permission in writing of the Labour Commissioner. The matter came up before the Labour Commissioner and his Inspector warned them and requested the Bank authorities to keep them in service. The Bank could not agree and, therefore, the General Manager Mr. Thakur discussed the matter with the Labour Commissioner on the 19th February 1949 and the latter accorded permission. No document showing any express permission in writing has been produced but a letter written on behalf of the Labour Commissioner being letter No. 4882, dated 7th March 1949, has been produced by the Bank which states that permission for the dismissal of these people had already been accorded. The letter does not show that any such permission was accorded in writing. The Bank in its statement while referring to the said U. P. Labour Department order, did not indicate that " express permission in writing " was required. It merely mentioned that the permission of the Labour Commissioner was duly obtained. The statement obviously was a misleading one and on being questioned Mr. Patney for the Bank expressed his regret for the omission due to carelessness. We cannot but strongly condemn this kind of carelessness but we are unable at the same time to hold that it shows any *mala fide* intention. The letter No. 4882, dated the 7th March 1949 by itself does not satisfy the requirement of the aforesaid Government orders and we must hold, in the absence of the production of any writing, that no express permission in writing was given and that the said orders have been contravened. The aforesaid orders regarding discharge or dismissal were, however, cancelled

by the Labour Department Order, No. 1912-(S.T.)/XVIII-142 (S.T.)-48, dated 18th April 1949. As on the merits of the case we feel that these are not cases of victimisation but of a mere technical breach of the Government orders, and that the two employees in question were fully aware of the charges against them and were given an opportunity to explain their conduct, we think that the ends of justice would be met if the Bank only pays the salary of these two men up to the 18th April 1949, *viz.*, the date of the publication of the said order, and we direct accordingly. The amount should be paid within a month of the publication of this award.

Calcutta National Bank, Ltd.—

K. B. L. Saxena of the Lucknow Branch :

This is a case of alleged wrongful dismissal which was pending before the Provincial Adjudicator and was referred to this Tribunal by the Central Government's Order No. LR-2(233)/11, dated 12th October 1949. He was employed on 1st September 1943 as an apprentice and on the 1st of January 1947 his salary was Rs. 80 per month, his post being that of a Sub-Accountant. By its letter dated 19th May 1947 the Bank informed him that in accordance with the award of the Labour Commissioner (Mr. B. B. Singh) his salary was fixed at Rs. 60 *plus* Rs. 20 (D.A.) with effect from 15th March 1947. This letter was addressed to him as K. B. Lall Saxena, Assistant, Aminabad Branch. By his letter dated 30th May 1947 he expressed surprise at the change of his designation and enquired if it was a clerical mistake. No reply was sent to his letter but an order was made on 19th June 1947 for his transfer from Lucknow to the Central Office at Calcutta with effect from 7th July 1947. This letter was received by him on 26th June 1947. He was arranging to go but fell ill and absented himself from the Lucknow Office on the 2nd, 3rd and 4th of July. He attended on the 5th July but again fell ill and on 6th July 1947 he applied with a medical certificate for one month's privilege leave on the ground of illness. The medical certificate shows he was suffering from bronchitis with fever and cough and therefore it was not possible for him to join on the 7th of July at Calcutta. The leave was not granted and the Bank terminated his services on the 19th July 1947 with effect from 7th July 1947 for failure to comply with the order asking him to join the Central Office. He is an active member of the Union and it is urged that he has been victimised on account of his Union activities. He claims reinstatement as well as salary from 1st July 1947 to 7th July 1947 with dearness allowance, six months' salary from the date of his dismissal at Rs. 120 per month and Rs. 800 towards his pension. On behalf of the Bank it was denied that any leave application as alleged by him was received, but when the acknowledgment receipt was produced, it was admitted that the application had been received and forwarded to the Head Office for orders. The Bank in its statement states various reasons for his dismissal and some of them are that he is a troublesome element and not loyal, that he made bogus entries in a register, and that his work was unsatisfactory; but in the letter of dismissal from the Bank only his failure to comply with the Head Office order asking him to report for duty at Calcutta is shown as the cause of his dismissal. It does not appear whether the Bank took any pains to enquire into the correctness of his allegation of illness which was supported by the certificate of a doctor. The argument of the Bank, that he did not take any steps after his dismissal and as such he had no complaint is disproved by the representations made by him on the 4th and 6th August 1947 to the Labour Commissioner complaining about his dismissal. In its letter to the Labour Commissioner on the 11th September 1947 the Bank stated that from reports

received from private source the Head Office of the Bank began to suspect that he was a person who should not be retained in the service of a Bank. From this reply alone it is clear that the real cause of his dismissal was not what was alleged in the letter of the 19th July but something else; it was probably his union activities. It does not appear that Saxena was told anything about the alleged reports or the reasons for the Bank's suspicion about his loyalty, etc. In the circumstances we think that this should be regarded as a case of victimisation. We, therefore, direct his reinstatement and payment of his salary of at Rs. 60 for the period from 1st July 1947 to 7th July (*plus* dearness allowance at Rs. 20 per month) and for the next six months. We further direct that such payment as well as reinstatement shall be made within a month from the date of the publication of this award.

Punjab National Bank, Ltd.—

S. S. Katyayani of the Gorakhpur Branch :

The case is withdrawn on the Bank's undertaking to consider his claim sympathetically.

Shanti Swarup Jain of the Shahjahanpur Branch :

His case is that he fell ill in January 1949 and applied for leave on medical grounds. He was asked to join duty on 21st March 1949 but on account of the state of his health he could not join and he explained his inability to the Bank. He did not get any reply. When he became fit on the 19th of July 1949 he wanted to join but he was not allowed to do so. The Bank's case is that he joined as a probationer in 1946, that his work was unsatisfactory, that even after the period of probation of 12 months was over he was given six months more to improve but that he did not and that therefore his services were terminated by giving one month's notice. He brought this matter before the Labour Commissioner and the Bank agreed to re-emply him and pay him three months' salary by way of relief and he was re-employed. On 6th November 1948, he was posted at Shahjahanpur. He did not join but applied from time to time for leave. He was absent from his work for six months and out of which for four months he submitted no application for leave; and when he wanted to join in July 1949 the Bank refused to allow him to join. He made a representation to the District Manager, Eastern Circle, who permitted him to join at Shahjahanpur but he did not join there. He is working at present in S. S. Vidyalaya, Hathras. He was asked again by the Manager on 4th October 1949 and 15th October 1949 to join within a fortnight but he did not do so. It seems clear that this is not a case of victimisation and no order need be made.

Munshi Lal, Chowkidar, Aligarh Branch :

His services were terminated after 13th June, 1949. We, therefore, make no order.

Binayak Pershad :

He was an Accountant at the Arrah branch. He joined service on the 30th August 1928. His complaint is that on 1st July 1948 he was made to retire. His age is 55 but he claims that he is still fit for work. He represented his case to the Head Office and to the Labour Commissioner but did not get any relief. The Bank has granted him three months' salary as gratuity. Mr. Mehrotra admits that this is not a case of victimisation and, therefore, no order need be made.

C. P. Misra of the Gorakhpur Branch :

He is a Daftary. Mr. Mehrotra admits that this is not a case of victimisation. There is, therefore, no need to make any order.

Ram Vilas Misra :

He is a Brahmin peon who complains he was asked to wash "jhutha pots" in contravention of the terms of his service. The Bank having agreed to settle the matter, no order is now asked for.

Allahabad Bank, Ltd.—

Badri Narain Misra of the Gorakhpur Branch :

His complaint was about his demotion and non-confirmation. By his letter dated 14th December 1949 he withdrew his complaint and did not press his case before us. No order need therefore be made.

Viswanath Upadhyaya of the Faizabad Branch :

He was working at Faizabad for 4 years as clerk-in-charge. In August 1948 he was promoted to the grade of supervisors and got the higher grade salary with retrospective effect from 1st January 1947 in the scale recommended in the award of Mr. B. B. Singh, *viz.*, Rs. 120—8—200—10—300. The provident fund deduction was made on the salary of that grade. In June last he was informed that he was to get a salary as an ordinary clerk and for two months was so paid. It is contended on his behalf that having regard to the terms of the said award he should have been confirmed in the grade mentioned above. On behalf of the Bank it is said that clerks-in-charge are not head clerks or supervisors or departmental in-charges and as such not entitled to the scale of pay recommended by Mr. B. B. Singh, that having regard to the fact that the position of a clerk-in-charge had not been decided by any Tribunal, the Bank agreed to place such clerks on the special scale at the suggestion of the Labour Commissioner and that therefore it became necessary to reorganise the cadre of such clerks and fill the appointments with more senior employees. He was, therefore, granted an officiating allowance representing the difference between his basic salary and dearness allowance and the minimum of the special grade with effect from 1st January 1947. In June he was replaced by a more senior clerk in the post but he was paid the salary of the special grade by mistake; rectification was made and Bank did not ask for a refund. It has been pointed out on his behalf that his salary up to May 1949 was Rs. 136 and by reason of the reversion he is getting only Rs. 83, and that there are cases in which persons junior to him and getting lower salaries were put in the special grade of Rs. 120. This is not disputed by the Bank, and no reason has been assigned by the Bank for his anomaly. The argument advanced on behalf of the Bank that seniors were given priority, therefore, does not appear to have substance, and in the circumstances we see no reason why this employee should not continue to get the salary of the senior grade as he was getting before. We, therefore, direct that he should be given the special grade salary and be confirmed in that grade with effect from the time when the alleged rectification was made. The reinstatement should be made and the amount due to him should be paid within a month of this award becoming effective. In making this order we do not decide at this stage what the status of the clerks-in-charge should be in this establishment.

Jiyalal Sharma of the Meerut Branch :

He has put in 23 years' service and his salary was Rs. 160 *plus* dearness allowance Rs. 40 per month. On 15th March 1947 he was working as a head clerk at the Hathras Sub-Agency, and under the Award of Mr. B. B. Singh he was entitled to be put in the departmental in-charge's grade, that is, Rs. 120—8—200—10—300. The Bank states that on account of his reported unsuitability for the post it was decided to replace him and arrangements were made on 13th February 1947 for his transfer to Meerut as an ordinary clerk; and that he was in fact relieved on 19th March 1947 from the Hathras Sub-Agency. His case came up for consideration before this Tribunal on 20th September 1949 at Delhi and it appears from the minutes of the Tribunal that this was then considered to be not a case of victimisation. This case is similar to the case of Viswanath Upadhyaya and for reasons similar to those stated in that case as also for the reason that no particulars were furnished to him or to us about his alleged unsuitability for the post we direct that he be put in the departmental in-charge's grade with effect from the date on which he was reverted to the post of an ordinary clerk. The reinstatement should be made and the amount due to him, if any, should be paid within a month of this award being effective.

Prahlad Das Seth of the Agra Branch :

He is alleged to have been wrongfully dismissed on 3rd May 1949 without any reason being assigned or his explanation being called for. He was appointed a cashier in 1946 and confirmed in that year. The Bank states that his work was not satisfactory and the Bank's Treasurer who gave a guarantee for him withdrew his guarantee and that the Bank, therefore, terminated his services after giving him a month's salary. By their letter of the 11th January 1949 the Bank asked the permission of the Labour Commissioner to terminate his services and by a letter No. 4414/I.R. (1) 41, dated the 14th February 1949 the Labour Commissioner granted permission for terminating his services. In the circumstances, we do not interfere.

Central Calcutta Bank, Ltd.—

Raghuraj Singh of the Bareily Branch :

He was a Head Clerk in the Rai Barelli branch from 1945 up to the 31st December 1947 at a salary of Rs. 65, although under the Award of Mr. B. B. Singh he was entitled to Rs. 75 and in January 1948 he should have been entitled to draw Rs. 80. He applied for such increment and he was transferred to Bihar at a time when the Notification No. 4692 (S.T.) /XVIII-142 (S.T.) -1948, dated the 31st July 1948, preventing transfers without the express permission in writing of the Chairman of the Conciliation Board was in force. He says that this was done with a view to avoiding the application of the award in his case. He was retrenched on 4th April 1949. The Bank has not appeared and Mr. Mehrotra states that the Bank is reported to have suspended payment. There is no order before us to show whether the Bank is still functioning or has been wound up. In the circumstances we make the order that the transfer order to Bihar shall be cancelled and that he shall be transferred back to the U. P. where the Award of Mr. B. B. Singh is in operation and be entitled to get the salary provided under the Award. This should be done within a month of the Award being effective.

Bharat Bank, Ltd.—

J. N. Mehra of the Allahabad Branch :

He was an employee at the Allahabad branch since 1943. It is alleged that he was an active member of the local Trade Union and as such along with two others represented the case of his co-workers before the Labour Commissioner, U. P., and that on account of this he incurred the displeasure of the management who transferred him to Udaipur without assigning any reason and terminated his service on the 20th November 1947. The Bank in its statement filed on the 17th December 1949 does not specifically deny the allegations made by him but states that at first his work was unsatisfactory but that afterwards he showed signs of improvement and the management promoted him to the post of an Assistant Accountant in December 1946. He was at Allahabad but at that time the necessity for abolishing one of the two posts of Assistant Accountants was felt and he being the junior it was decided to transfer him from Allahabad and as a post of an Assistant Accountant fell vacant at the Udaipur branch he was transferred there with a view to promoting him to the post of Accountant. This order was made on 7th July 1947 and immediately on receipt of this order he applied for 3 weeks' leave on the ground of his wife's illness. The Head Office declined to grant this leave and he was informed telegraphically to that effect but as he did not comply with the order his conduct, it is alleged, was viewed with disfavour by the Management. He was served with a notice to join duty on 30th July 1947 at Udaipur which he did on 1st August 1947. His services were terminated on 20th November 1947 on payment of three months' salary in lieu of notice according to the conditions of his service. The Bank has taken the objection that as he was a permanent member of the branch of the Bank in the Udaipur State at the time of the termination of service, this Tribunal has no jurisdiction to interfere in his case. We over-rule this objection because the dispute really arose with the order of transfer. It appears that in compliance with the notice to join duty on the 30th July 1947 he did not join on that date but joined on 1st August 1947. Nothing has been produced on behalf of the Bank to show that any explanation was called for as to the delay of two days in joining his duty ; and if this was the ground on which his service was terminated it is difficult to see why his services were terminated so late as the 20th November 1947. If, on the other hand, his flouting of the Head Office's orders and continuing to remain absent from duty was the ground for the termination of his service, it is not clear why he should have been asked to join duty by the 30th July 1947 ; that order suggests that the management condoned the alleged flouting of their orders. It seems to us that the reason assigned by the Bank is not the true reason for terminating his service ; the true reason may properly, in our opinion, be held to be his union activities. It is stated by him that this is a test case and he has not asked for any specific relief. On enquiry we came to learn that only lately, *i.e.*, on 12th December 1949 he has succeeded in getting a job after nearly about 2 years of unemployment. He is, however, willing to join this Bank. We, therefore, direct his reinstatement if he be still so willing, within two months from the date on which this award becomes operative, and we further direct payment to him, within a month from such date, of his pay and allowances for six months immediately prior to his reinstatement.

Parmeshwar Din Misra of the Kanpur Branch :

He joined the Nayaganj branch as a Sub-Manager on 1st June 1944 and continued to be there up to 7th April 1947. He was promoted to the next

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higher grade for his efficient services on 8th April 1947 and posted at the Meston Road sub-branch where he performed double duties without any extra remuneration. There was a difference of opinion between him and the Manager Shiva Nand under whom he was working over certain matters which ended in his refusal, it is alleged, to file a false affidavit in connection with a case relating to the Nayaganj Branch Office. He was thereupon, it is alleged, wrongfully transferred from Meston Road to Delhi on 6th August 1948 without obtaining the permission required by the Notification of the U. P. Government No. 4692, dated 31st July 1948, during the period of his convalescence after illness. This matter was referred to the Conciliation Board and his transfer was cancelled. He became ill and wanted leave but the Manager Shiva Nand refused to grant him leave and his services were terminated on 11th January 1949 again without obtaining the express permission of the Provincial Government. His designation was that of a Sub-Manager but in fact he was a workman having no power of an officer and he has been held to be so by Mr. R. S. Nimbkar, Chairman of the Conciliation Board and also so recognised by the Bank itself by seeking permission of the Labour Commissioner for terminating his service. It has also been contended on his behalf that even if he be considered to be an officer there can still be an industrial dispute and in support of the contention reference is made to *Western India Automobile Association v/s Industrial Tribunal, Bombay,* reported in Vol. 36, Federal Court (August 1949), page 111. He has claimed various reliefs, *viz.,* reinstatement with full pay of Rs. 200 with increments of Rs. 60 (because he did not get any such increments) *plus* dearness allowance of Rs. 20 and house allowance of Rs. 30 from the date of the notice of the termination of his service, *i.e.,* 8th January 1949, payment of Rs. 131-12-0 as conveyance charges and Rs. 3,500 for debts which he incurred for being out of employment. No reason having been assigned for the dismissal and no explanation having been called for, it has been contended that he is entitled to reinstatement as a matter of course, such dismissal being against the principle of natural justice. The Bank's case as disclosed in its statement is that in 1948 it was discovered that he was overcharging the Bank in respect of the conveyance allowance due to him, and that, therefore, he was transferred to Delhi. This case was referred to the Conciliation Board and at the suggestion of the Conciliation Officer, he was kept as a Relieving Officer at the Kanpur branch but he did not join there. On 4th September 1948, 11th September 1948, 18th September 1948, 18th October 1948 and 18th November 1948 he made applications for leave and it appeared to the Bank that either he was not willing to work unless he was given charge of an independent officer or his health had been too much impaired. In the Bank's letter dated 8th January 1949, however, no such reasons were mentioned but it has been contended by the Bank that it was not necessary to mention any ground so long as a month's notice was given in lieu of salary. The matter of his dismissal came up before the Labour Commissioner as will appear from a letter dated the 13th April 1949 addressed by the Bank to the Labour Officer at Kanpur wherein it is stated, "We now propose to withdraw the dismissal order of Shri Misra and would instruct Shri Misra to resume his duty at Nayaganj Kanpur Branch. But as soon as he resumes his duty we will be serving a Charge Sheet on him calling for his explanation on certain points. But in the meantime as soon as the Charge Sheet is served on him we beg to seek your permission to suspend him. The first condition of the Charge Sheet would be that he is to give the replies of the points raised therein within 4 days of the receipt of the Charge Sheet. A copy of the Charge Sheet along with the replies of Shri Misra would be duly conveyed to you for your decision". The Labour Officer, therefore, recognised that the dismissal without any reason being assigned therefor

or an explanation being called for could not be justified. There is nothing in the record to show what happened after the letter of the 13th April was written. Apparently the order of dismissal was not withdrawn. This order of dismissal, in our opinion, is clearly wrongful, as he had no opportunity of offering any explanation to the Bank in respect of the matters alleged in the Bank's statement that influenced its decision to terminate his serivce. Apart from that it is not improbable that the real reason is his misunderstanding with the management and his approach to the Labour Commissioner. The objection of the Bank that he is an officer does not appear to us sustainable. Although his designation was that of a Sub-Manager he alleged that he had no duties and responsibilities of a directional or controlling nature and in his application he has given particulars to substantiate this allegation; and the Bank in its statement has specifically dealt with all his allegations but left undenied this allegation, merely contenting itself with relying on the designation. In these circumstances we are not prepared to attach importance merely to the designation. We, accordingly, direct his reinstatement and the payment to him of his pay and allowances from the date of his dismissal till reinstatement at the rates at which he was drawing them on 11th January 1949. We further direct that this direction shall be carried out within a month of the award being effective.

Birbal P. Rajbanshi and *Ravi Dutt Kuchal* of the Meerut Branch:

These are cases of wrongful transfers. As they happened after the 13th June 1949, we give no directions.

Madan Lal Sharma of the Hathras Branch:

He was appointed on 9th April 1947 as the chief cashier at Hathras on a salary of Rs. 60 *plus* Rs. 25 as dearness allowance. He was paid the same remuneration as is paid to the Assistant Cashiers. On 14th January 1948 he approached the Labour Commissioner for an increase of his salary under the Award of Mr. B. B. Singh, the minimum pay thereunder to which he would be entitled being Rs. 120. In March 1948 the Labour Commissioner took up the matter. On the 20th March 1948 the Treasurer demanded a security of Rs. 4,000 within a week from the said date because, it was said, "as reported to me several times there was shortage in cash handled by you in the Bank in the course of your duties" and he was informed that in the event of failure he would be obliged to withdraw his guarantee. On the 29th March 1948 he protested against this demand as no such security had been demanded from any one before and said that there had been no shortage in respect of the cash handled by him. In spite of that, however, he offered to give the security of his properties worth Rs. 10,000 or in the alternative to send a cheque for Rs. 500 as further security. But this offer was not accepted and on the 31st March 1948 his services were terminated on the plea that the security required had not been furnished. His case is that his services were terminated because the management was annoyed by reason of his approach to the Labour Commissioner. The Bank's case is that the Treasurer having wanted Rs. 4,000 security which he failed to furnish the Treasurer withdrew his guarantee and that, therefore, his services had to be terminated, which was done on payment to him of a month's salary in lieu of notice. Various other reasons have been mentioned in the Bank's statement, *viz.*, he was reported to be negligent in his work and unamenable to office discipline. The letter of dismissal of the 31st March was addressed by Mr. Harilal Barman of Messrs. Harilal Barman & Sons, who are the Bank's Treasurers, and not by the Bank, and no reason was assigned therein other than his failure to "give the requisite deposit". It is also stated in the letter,

"I terminate your service and send you a cheque for Rs. 60 on the Bharat Bank representing one month's salary in lieu of notice though as you are my employee you are not entitled to that amount even". Our attention has not been drawn to any instance in the Bank where the cashier is regarded as an employee of the Treasurer. He may give his guarantee to the Bank and on his recommendation he may be employed by the Bank which pays the salary and other emoluments; and it is the Bank that should, therefore, retain the power of dismissal. As far as we know that is the rule everywhere and except in the case of two Banks mentioned in the Report of the Conciliation Board (Banks) in U. P., *viz.*, the Punjab National Bank, Ltd., and the United Provinces Provincial Co-operative Bank, Ltd., there is no evidence to show that any Bank's practice or rule is different. The Treasurer's letter of dismissal appears to us to be an extraordinary piece of document. Mr. Mehrotra has stated that the security of the Treasurer is only for Rs. 4,000 and that, therefore, the demand of a security of Rs. 4,000 from this employee was merely a ruse for the purpose of getting rid of him because he had applied to the Labour Commissioner for increase of his salary. On the facts of this case we have little doubt that the Treasurer demanded the security, withdrew the guarantee and sent the letter of dismissal at the instance of the Bank as a retaliatory measure because of his application to the Labour Commissioner. We therefore, direct his reinstatement as from the 1st April 1948 and the payment to him of the arrears of his emoluments from the date of his dismissal till the date of his reinstatement at the rate of Rs. 60 *plus* Rs. 25 as dearness allowance a month within a month from the date of the publication of this award.

Ghana Shiam Singh of the Roorkee Branch:

He was a clerk in the Roorkee branch. On 15th December 1948 he was asked to show cause why he should not be dismissed for failure to submit an explanation on the charges made in the letters addressed to him dated 13th October 1948 and 15th October 1948. The charges were that he had been absent without leave, that he had been negligent in his duties in that a heap of unfiled papers were found in the drawer of his desk and that he had made false entries in the pass book register. As he refused to submit any explanation the permission of the Labour Commissioner was sought and he was suspended on 15th December 1948 and he was again called upon to explain the charges against him. On 4th January 1949 he submitted an explanation the substance of which is that his leaving the office and not filing the letters and making the entries in the pass book were all done on the verbal permission of the Branch Manager. The Bank considered his explanation to be false and with the permission of the Labour Commissioner his services were terminated. We do not feel that we should make any order in this case.

Hindustan Commercial Bank, Ltd.—

Purnachand Mehrotra of the Allahabad Branch:

He joined as a cashier at Allahabad on 24th April 1947 and his services were terminated on 12th May 1949 without assigning any reason. The Bank's case is that there were three cashiers in the above branch, that for reasons of economy the number was required to be reduced to two and that as he was the juniormost cashier he was paid one month's salary and his services terminated, Mr. Misra on behalf of the employees has contended that if the services of an employee were to be terminated for such reasons, the juniormost cashier in the whole service should be made to go. The Treasurer has to give a guarantee for a cashier to the Bank. In this case there is only one treasurer for Allahabad and

Pratapgarh under whom there are five cashiers in the two places and he was the juniormost of those five. If the juniormost cashier in any branch outside the jurisdiction of this particular treasurer is dispensed with and this employee is posted there, he may not be acceptable to the treasurer there. In our opinion, in view of these considerations the view that the juniormost man in the whole service in the category of cashiers should be made to go cannot be accepted. This is not a case of victimisation and we, therefore, do not propose to make any order.

Baikunth Nath of the Gorakhpur Branch :

He was appointed head cashier in 1943. He had two cashiers under him. In May 1949 the Bank changed his designation to that of cashier. The Bank does not object to giving him the designation of head cashier and therefore, no further directions are necessary in this case.

Lachman Swarup of the Meerut City Branch :

The case is *sub judice* in a Magistrate's Court and we are unable to give any directions in this case at this stage.

Ramesh Chand Raizada of the Kanpur Branch :

Kailash Nath Bajpai of the Kalpi Road Branch :

J. N. Srivastava of the Hazratgunj Branch :

These cases are pending before the Conciliation Officer and therefore, no order is called for.

K. L. Bhandari of Mauranipur Branch :

Mr. Mehrotra states that this is a case of non-implementation of an Award. There is no need, therefore, for the Tribunal to give any directions in this case.

K. C. SEN,
Chairman.

J. N. MAJUMDAR,
Member.

BOMBAY,
25th January 1950.

N. C. KUPPUSWAMI, Under Secy.

(Vide *Gazette of India*, Part I, Section 1, dated February 18, 1950, pp. 238-242).

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(6)

MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 22nd February 1950

No. LR.2(270)-I.—In pursuance of section 17 of the Industrial Disputes Act 1947 (XIV of 1947), the Central Government is pleased to publish the following award of the All-India Industrial Tribunal (Bank Disputes) in the matter of alleged victimisation, etc., in respect of Chartered Bank of India, Australia and China.

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BEFORE THE ALL-INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES), BOMBAY

ADJUDICATION

BETWEEN

Chartered Bank of India, Australia and China

AND

Fram Jamshedji Patel

In the matter of alleged victimisation

Appearances :

Counsel Mr. A. C. Beynon, for the Chartered Bank of India, Australia and China, Bombay.

Mr. S. S. Dighe, Advocate, for the Federation of Bank Employees, Bombay.

AWARD

The following case was heard at Bombay on the 4th February 1950. It was alleged by the Federation of Bank Employees, Bombay, that it was a case of victimisation.

From Jamshedji Patel of the Chartered Bank of India, Australia and China :

He was a clerk in the Chartered Bank of India, Australia and China. By an agreement dated 16th December 1938 the said Bank purchased the undertaking of the P. & O. Banking Corporation, Ltd. The said agreement *inter alia* provided that the said Bank would fulfil all the contracts and engagements of the P. & O. Bank current at the date (other than contracts of employment subsisting between it and its officers and employees and its engagements, if any, in connection with any pension, provident or other funds or schemes instituted for the benefit of any such officers or employees). Consequent upon the purchase by the said Bank the P. & O. Bank gave notice on 19th January 1939 to all the employees terminating their engagements with effect from the 28th February 1939. Thereafter the P. & O. Bank issued a circular which ran as follows " Whilst it is impossible for the Chartered Bank to absorb all the staff, it is hoped that at least a portion of the local staff will be taken over by them. If any member can obtain employment before 31st January 1939, your Manager has been advised to give every assistance * * * * In cases where members of the P. & O. Bank are re-engaged by the Chartered Bank, it will only be possible at first to do so on a temporary basis, and full pay, on the terms agreed with the Chartered Bank, will be paid by the latter Institution for all work done on and after 1st February 1939. Should, however, any clerk be engaged permanently by the Chartered Bank after 1st February 1939, it will be a condition of his engagement, if 25 years of age or over, that all sums paid to the clerk by the P. & O. Bank :

(1) Salary for period of notice ;
(2) Balance of Provident Fund ;

shall be paid to the Chartered Bank, to be held in trust by that Institution for the benefit of the Clerk under a Scheme to be formulated later ". Several employees of the P. & O. Bank were employed by the Chartered Bank on those conditions. The Award of Divatia, J. which came into operation in April 1947

provided that the adjustment of the then existing salaries to the new scales to be paid under that award should be made in a manner which might give a fair rise to as many employees as possible, particularly old ones, consistent with their standing and their efficiency. He, therefore, directed that each big bank should make its own adjustment according to the observations made in his award and that if it was not generally acceptable to the employees the aggrieved parties might apply to the Court for its modification. Some employees of the P. & O. Bank in respect of whose salaries the adjustment was alleged to have not been made according to that direction applied before Divatia J., who made an order dated 19th December 1947 as follows: "As I find that some of the clerks have not received even a fair increment, I think that the adjustment granted for these clerks should be revised and that an increment of Rs. 30 should be given to clerks having 25 years' service and an increase of Rs. 25 to be given to clerks under 25 years' service. This order was published in the *Bombay Government Gazette,* Part I, dated January 8, 1948 at page 127. The Bank not having adjusted the salaries in accordance with that order, those employees made an application, being Application No. 37 of 1948, before the First Labour Court which held that there was an illegal change within the meaning of Section 46 of the Bombay Industrial Relations Act. The Bank preferred an appeal against this decision to the Industrial Court, which on 11th October 1948 set aside that order on the ground that the provisions of Section 74 (2) of the Bombay Industrial Relations Act had not been complied with and that the application was, therefore, incompetent. Consequently the said order was published by the Registrar as a supplementary award under provisions of the said Section 74 (2), whereupon the aforesaid employees again made an application, being Application No. 7 of 1949 to the Second Labour Court under Section 78 (1) A (c) read with Section 46 (5) of the Bombay Industrial Relations Act, 1946, for a declaration that the Bank had made an illegal change and for consequential relief. Patel who was in the service of the Chartered Bank gave evidence in favour of the applicants at the hearing of this application to prove that the service of these employees was a continuous one so that they would be entitled to the benefit of the said Award. He deposed that in a speech by Mr. Marrable, the Manager of the Chartered Bank, he had assured those employees of the continuity of their service. Another employee of the Chartered Bank, Ghadiali, also deposed to the same effect. In delivering judgment the learned judge of the Second Labour Court, remarked: "Both these witnesses seem to be so over-enthusiastic for proving the case that they make many statements which are quite false. Mr. Patel says that Exhibit No. 29 which is dated 2nd August 1946 was read in the meeting held on 17th July 1946. He persists in making this statement even after the improbability is pointed out to him. He denies some of his statements made in the previous proceedings by saying that the record may be incorrect"; and the Court dismissed the application. Thereupon the Bank held proceedings against Patel under Rule 21 of the Model Standing Orders for the Banking Industry and in accordance with Rule 22 thereof a charge sheet was given to Patel on 30th May 1949 when he was also suspended. He was given an opportunity to answer the charges and was permitted to be defended by his representative under Section 30 of the Bombay Industrial Relations Act. There were two charges against him; one was in respect of giving false evidence against the Bank, which according to the Bank, amounted to misconduct under sub-rules (iv) and (xiii) of Rule 21, and the other charge was that he had improperly obtained certain information about the names and adjustments of 19 persons from the Cash Department, knowing that the proper method would have been to approach the Court and ask that the Bank be directed to produce the information, and that he had unscrupulously persuaded another employee

of the Bank to betray the confidence of the Bank and give him the said information. According to the Bank these acts amounted to misconduct under sub-rule (xvi) and sub-rule (xviii) of Rule 21. An enquiry was held into these charges and the Bank came to the conclusion that he was guilty of misconduct as contemplated by the said rule, and by an order dated 19th June 1949 he was dismissed without notice. This is the order that is challenged before us.

We must rule out the objection of the Bank that this Tribunal has no jurisdiction owing to the order of dismissal having been made on 16th June 1949, which was after the date of the Notification (the 13th June 1949) referring the dispute to this Tribunal. The order of suspension was made on 30th May 1949 and we must hold that the dispute between Patel and the Bank which ultimately resulted in the former's dismissal, arose or in any event was apprehended prior to the date of the Notification.

Mr. Dighe for Patel did not contest the finding of the judge of the Second Labour Court that the statements made by him were false. He did not deny that Patel had made the statement which was recorded by the Bank in course of the enquiry in connection with the information obtained by him as follows: "I know that the proper method would be for me to approach the Court and ask that the Bank be directed to produce the information. The witness volunteers. My waiting would have been too late. If I had gone to the Court it would have been too late because I would have gone to the Court without the information. Question: Surely you had time to approach the Officer of the Bank to get the information. Answer: I am positive that the Bank would not have given me the information on the contrary, they would have blamed me * * * * * I had to persuade Mr. Hathiram to betray the confidence of the Bank and give me the information * * * * For this matter I had acted unscrupulously". Mr. Dighe, however, contended that the giving of false evidence did not constitute misconduct within the meaning of Rule 21. Now Rule 21 *inter alia* provides that the following acts and omissions on the part of an employee shall amount to misconduct; sub-rule (iv): abetting, conniving at or attempting or committing of, theft, fraud or dishonesty in connection with the business, property, or affairs of the Bank or its customers: sub-rule (xiii); doing any act, or engaging in any business prejudicial to the interests of the Bank.

Mr. Beynon on behalf of the Bank, has contended that the giving of false evidence in the Court amounted to dishonesty in connection with the affairs of the Bank within the meaning of sub-rule (iv) and that in any event it amounted to an act prejudicial to the interest of the Bank within the meaning of sub-rule (xiii). As to dishonesty, Mr. Beynon has contended that even if the word be given the meaning given under the Indian Penal Code, that is, an act intended to cause wrongful loss or wrongful gain, the object of Patel in making the statement was to induce the Court to hold that the service of the ex-employees of the P. & O. Bank was continued in the Chartered Bank and that, therefore, they were entitled to higher salaries in accordance with the directions of Divatia J., so that it can be said that there was an attempt to cause wrongful loss to the Bank and, therefore, also an act prejudicial to the interests of the Bank. We are of opinion that there is considerable force in Mr. Beynon's arguments, but it seems likely that the word "misconduct" in the Rule has been used in its wider and more popular sense; and we feel we should be justified in holding that the giving of the false evidence amounted to misconduct within the scope of Rule 21. With regard to the second charge, it has been admitted by Patel that he persuaded the Assistant Cashier Mr. Hathiram to betray the Bank's

confidence and that he acted unscrupulously. This obviously comes within the provision of sub-rule (xvi) of Rule 21, being the commission of an act subversive of discipline or good behaviour on the premises of the Bank. The question that now arises is whether the order of dismissal was made by reason of this misconduct or whether the misconduct was utilised by the Bank for the purposes of getting rid of Patel, who was an active member and important office bearer of the Chartered Bank Employees' Union and the Federation of Bank Employees, Bombay and who took an active part in various proceedings, figuring either as an applicant or witness on behalf of the employees in Labour Court. It has been stated by Mr. Beynon that the other witness Ghadiali who also gave false evidence was not discharged because he offered an apology. Patel was also asked, but refused, to offer an apology. The fact that Patel was given an opportunity to offer an apology suggests that if he had availed himself of it he would not, in all probability, have been dismissed. This sufficiently proves, in our opinion, that he has not been punished or victimised owing to his trade union activities. Accordingly we do not think that the order of his dismissal calls for interference by us.

K. C. SEN,
Chairman.

J. N. MAJUMDAR,
Member.

BOMBAY:
11*th February* 1950.

N. C. KUPPUSWAMI, *Under Secy.*

(Vide *Gazette of India*, Part I, Section 1, dated March 4, pp. 1250, 296—277.)

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(7)

MINISTRY OF LABOUR

NOTIFICATION

New Delhi, the 7th March 1950

No. LR. 2 (268) /I.—In pursuance of section 17 of the Industrial Disputes Act, (XIV of 1947), the Central Government is pleased to publish the following award of the All-India Industrial Tribunal (Bank Disputes), in the matter of alleged victimisation, wrongful dismissal, etc., in respect of the Imperial Bank of India (Bengal Circle).

BEFORE THE ALL-INDIA INDUSTRIAL TRIBUNAL (BANK DISPUTES), BOMBAY

ADJUDICATION

BETWEEN

Imperial Bank of India (Bengal Circle)

AND

Its Workmen

In the matter of alleged victimisation, wrongful dismissal, etc.

Appearances :

Mr. Niren De with Mr. Jyoty Ghose for the Imperial Bank of India Indian Staff Association (Bengal Circle).

Dr. S. K. Gupta instructed by Messrs. Sandersons and Morgans, Solicitors for the Imperial Bank of India.

AWARD

The cases dealt with in this Award were heard at Calcutta between the 6th December 1949 and the 9th January 1950.

The Imperial Bank of India Indian Staff Association (Bengal Circle) sent a list of alleged cases of victimisation along with a letter which they addressed to the Managing Director of the Imperial Bank of India on the 24th September 1949, and these cases (along with the number assigned to each case) are taken from that list.

Nandkrishore Mishra (No. 20).—The alleged victimisation in this case is stated to have consisted in his demotion. His case is that he was appointed a clerk on 20-10-1924 at the Chandausi Pay Office, that later on he became the clerk-in-charge of the said Pay Office and continued in that position for 11 years, and that on 1-8-1948 he was informed by the Agent of the Bank that he had to revert as an ordinary clerk in view of the past unsatisfactory inspection reports regarding him. He wanted a copy of the said reports by his letter of the 14th September 1948 but they were not supplied to him. With reference to that letter it was stated by the District Manager, Kanpur, to the Agent, Imperial Bank of India, Bareilly, that he had been advised by the Allahabad Agent that Mishra's shortcomings had been duly pointed out to him from time to time and that he had nothing to add to what had been communicated to him by the Allahabad Agent. On behalf of the Bank it has been stated that this is not a case of demotion, that Mishra's substantive appointment was that of a clerk and that when he was acting as clerk-in-charge he was drawing only an acting allowance for the period for which he so acted. It appears, however, from a copy of the letter of the District Manager, Kanpur, dated the 29th June 1945 addressed to the Agent, Allahabad Branch, that the latter was accorded sanction to confirm him in his appointment as Clerk-in-charge of Pratabgarh Treasury Pay Office with effect from 17-6-45. Therefore the Bank's contention that his substantive post was that of a mere clerk cannot be accepted. Dr. Gupta appearing on behalf of the Bank admitted that when he was allowed to continue in that office it amounted to confirmation. We hold, accordingly, that he was confirmed as clerk-in-charge with effect from the 17th June 1945, and that, therefore, his reversion to the post of an ordinary clerk has caused to him a loss

of Rs. 90—13—0 per month consisting of the Treasury Pay Office allowance, dearness allowance, house allowance, etc. In a letter dated the 10th September 1949 the Deputy Secretary and Treasurer stated that his shortcomings in regard to his lack of business ability were pointed out to him in writing on three occasions during 1947 and 1949, and we have been furnished with some extracts containing remarks about him ; but unfortunately when he wanted copies of the inspection reports none was furnished to him. In the dispute between the Bank and the employees Mr. R. Gupta in his award (made in 1947) said that any adverse remarks against an employee should be mentioned in his service book after giving an opportunity to the employee to explain the charges. We understand that in pursuance of this direction the Bank issued circulars to all officers to act in accordance with the said direction; but in this case we find that it was not followed. We now proceed to consider the extracts filed, no service book having been produced before us. On 28th September 1947 it was remarked that as Clerk-in-charge of the Treasury Pay Office it ought to be Mishra's constant endeavour to secure to the Bank all acceptable cash credit advance business at his station. On 26th May 1948 it was stated that he had not made any progress towards the resumption and augmentation of acceptable business in respect of foodgrains and other grains in spite of the decontrol and withdrawal of restrictions on grains and seeds, and he was asked to exert himself in that direction and put up proposals for the revival of old business relations and the establishment of new ones. On 1st June 1948 it was stated it was incredible that no foodgrains were imported to Pratabgarh and that, therefore, it appeared that he was not sufficiently intimate with the local bazaar or the neighbouring *mandi* and did not carry the requisite influence to attract business to the Bank ; and he was asked to give serious consideration to the matter. He must obviously have been informed of these matters ; but the question that arises is, whether he was asked to explain why the Bank should not regard its inability to revive or attract business as directly attributable to his inefficiency and deal with him on that basis, *e.g.*, by demoting him. It does not appear improbable that he would have given a reasonable answer based on circumstances other than his inefficiency. From the extract of the inspection and audit report of the 6th April 1946 filed before us we find the following opinion of the Inspector as to his ability : "Average. Careful and hard-working but must concentrate more on bazaar contracts". The Agent was required to point out to him that he ought to maintain a close contact with the bazaar with a view to securing as much acceptable business as possible, and the Local Head Office wanted the Agent to submit to him in six months' time a special report on his work with particular reference to his relations with the local business community in order to be able to consider the desirability of his retention at the Treasury Pay Office. The Agent remarked that his shortcomings had been pointed out to him. There was a further report on the 24th May 1948 when the Inspector remarked that his work was just satisfactory but did not impress him as possessing either initiative or business ability, whereupon the District Manager remarked that he did not consider that Mishra was fit to be retained in his post and that his recommendations in that regard would be submitted to the Head Office shortly. The Head Office approved of his recommendations that he be removed from the charge of the Treasury Pay Office and reverted as an ordinary clerk ; he was accordingly so reverted. From all these materials it appears to us that no explanation was called for from him as to why he should not be demoted from his post, in which he had been confirmed, by reason of his shortcomings and want of business ability. The principles of natural justice required that before he could be so punished he should have been given an opportunity to defend himself. Those

principles, have been embodied in Rule 48 of the Book of Instructions of the Bank under which a full report must be sent to the Local Head Office accompanied, if possible, by the employee's explanations of the offence with which he is charged. In these circumstances we direct that this employee shall be reinstated in his substantive post as a clerk-in-charge and be paid the amount which he lost by reason of his demotion and that this direction shall be complied with within a month from the date of this Award becoming operative.

Sawal Das Agrawal (No. 26):

It is alleged that this is a case of victimisation by transfer from Azamgarh to Banaras because he was a founder and active worker of the local Staff Association. The Bank in reply has stated that it has the undisputed right to transfer any employee whenever or wherever it thinks fit and that this, therefore, is not a case of victimisation. In our opinion this is not a sufficient answer to his case. No reason had been given why his transfer was made. It appears from the documents disclosed at the hearing that he belongs to Azamgarh where he has his house and lives with his family, that on the 23rd March 1949 he was suddenly served with an order asking him to report for duty at Banaras, that certain complaints had been received against him purporting to have been made by the General Merchants' Association, Azamgarh, and that later the Secretary of the General Merchants' Association denied that any such complaint had been made by them, when it was discovered that the complaint was unsigned, and that the Bank nevertheless believed that one of the matters complained of, namely, that this employee's relatives had shops in Azamgarh, was true. Even if that was true, the fact remains that he was never asked to show cause why he should not be transferred on this ground; and it is by no means clear to us that the fact of his relatives having shops there was an adequate reason for the transfer. It appears to us more probable that he was transferred for his Trade Union activities. We therefore, direct that he shall be transferred back to Azamgarh within a week of this Award becoming operative.

Daya Ram Mishra (No. 27):

This is a case of alleged stoppage of an increment and demotion. He was working in the cash department at Banaras from 1923 or 1924. He was 45 years of age and the Bank wanted him to retire. On 26th April 1949 he submitted a representation stating that he was very fit and that he had a large number of dependants to maintain. On 10th June 1949 he was reverted with effect from 1st June 1949 as a Poddar on his then salary of Rs. 82 per mensem on the ground that he did not know English and that further increments should be given to him subject to approved service on the scale laid down for a Poddar. He contends that this amounted to demotion which deprived him of his graded salary for no reason except that he was not willing to retire as asked by the Bank. It appears from a letter dated 25th May 1949 by the Officiating Manager at Kanpur to the Secretary and Treasurer, Imperial Bank, as also from a letter of the Deputy Secretary and Treasurer to the Manager at Kanpur dated 2nd June 1949 that he was a Teller and was in that grade of a Teller in 1947 when Mr. Gupta made his Award. In that Award the Receiving and Paying Tellers were placed in Grade II Clerical, and, therefore, his reversion to the post of a Poddar (whose increments and maximum pay are lower than those of Grade II Clerical) was undoubtedly a case of demotion. The ground of his ignorance of English which seems to have been first discovered on 25th May 1949, as a disability in respect of the work which he had been doing for some years, does not seem to be a sufficient justification for the demotion, particularly as he was given no opportunity for explanation. We, therefore, direct that he shall be reinstated in his

former position as a Teller and shall get the pay and allowances due to him as such, besides the amount which he has lost by the demotion, within one month from the date with effect from which this Award becomes operative.

Mahendra Jha (*No.* 32):

On Dr. Gupta's stating that this employee is now a clerk on the same terms as before, the case is not pressed by Mr. De on behalf of the Association. No direction, therefore, is called for.

Sheo Prasad Gupta (*No.* 3):

He was a clerk in the Azamgarh Treasury Pay Office, having been appointed in May 1932. On 11th December 1948 he was arrested by the police under Section 3 (1) (*a*) of the Maintenance of Public Order Act, 1947, on the ground of his being an active member of the Rashtriya Swayamsewak Sangh (to be referred to hereafter as R.S.S.). By a letter dated 19th February 1949 the Bank suspended him with immediate effect. On 14th April 1949 he was informed by the clerk-in-charge, Azamagarh Treasury Pay Office that on the recommendation of the Secretary and Treasurer the Local Board had dismissed him with effect from 11th December 1948 in view of the fact that he had been found guilty of taking part in illegal political activities, and he was asked to refund the salary that had been paid to him from 11th December 1948 to 12th January 1949 amounting to Rs. 127-15-3. He was kept in custody up to 27th April 1949 when he was released unconditionally. He was never put up for trial. After his release he made representations to the Bank for a review of the order made against him and for reinstatement and the Staff Association also made similar representations on his behalf on 17-6-1949 the Deputy Secretary and Treasurer of the Imperial Bank in his letter to the General Secretary of the Association reiterated that he had been dismissed from the Bank's service owing to his having taken part in illegal political activities in connection with the R.S.S. movement, that his arrest, detention and inability to attend to his normal duties and his failure to make any representation to the authorities against the detention also justified his dismissal, and that there was no question of the payment of his salary after the date of his arrest or of the bonus for the half-year ending on the 31st December 1948. The Association has referred to another clerk named Koley who was arrested in February 1948 on account of his connection with the R.S.S. movement and released in July 1948 but who thereafter was reinstated. Dr. Gupta on behalf of the Bank referred to Article 50 of Diamond's "Master and Servant", where it is laid down that "it is the duty of the servant not to incapacitate himself from due and faithful service of the master," and contended that this employee must have known that the consequence of his association with the R.S.S. movement would be his detention and that he would thereby incapacitate himself from performing his duties, particularly as Government circulars had been sent to the Bank through the Reserve Bank in respect of employees concerned in political activities. The circulars have not been produced before us and we do not know what matters in particular they related to. With reference to the case of Koley Dr. Gupta stated that he had been reinstated at a time when the Bank had not formulated its policy regarding such of its employees as were concerned in political activities. As to the legal principle relied on by Dr. Gupta, it has to be borne in mind that the employee in question was not put upon his trial nor found guilty by any Court, nor was he called upon to give any explanation and that the ban on the R.S.S. movement has now been removed. It has not been established that Sheo Prasad was actually concerned with any such activities in connection with the R.S.S. as brought him under the ban or even that he was a member of the said organization.

If his explanation had been taken he might have been able to elucidate those questions. He has stated, and it has not been denied, that he has served the Bank with loyalty and integrity. We are of opinion, that after the removal of the ban the Bank ought to have considered his representation afresh and that the ends of justice would be sufficiently met if he be reinstated with effect from the 1st October 1949 and be allowed to retain the sum of Rs. 127-15-3 paid to him and if he be also paid the half-yearly bonus for the second half of 1948. We direct accordingly, and further direct that the reinstatement and the payment to him of the amount due up to the date of this Award becoming operative shall be made within one month from the said date. We also direct that the period of his absence from office shall not be regarded as a break in his service.

Behari Lal Sah (No. 4):

Hayat Singh (No. 5):

Har Dutt (No. 6):

Behari Lal Sah (No. 4) is a clerk and joined the service of the Bank on 10th May 1923; he is now 48 years old and has completed 26 years' service. Hayat Singh (No. 5) is a head messenger. He joined the Bank's service on 10th May 1923 and he is 48½ years old. Har Dutt (No. 6) is also a massenger; he joined the Bank's service on 10th May 1923 and is 53 years old. All these persons were attached to the Nainital branch, J. P. Mehta, the branch Agent, by his letter of the 8th April 1949 asked these three persons to submit their applications for retirement as required by the District Manager, Kanpur. Dr. Gupta states that on the 12th August 1949 the Secretary and Treasurer of the Bank informed the General Secretary of the Imperial Bank of India Indian Staff Association that these three employees had been permitted to continue in the Bank's service unless they themselves wished to retire. In the circumstances no directions from us in these cases are called for.

Chhagan Lal Mundra (No. 14):

This is a case of alleged wrongful dismissal. He was a poddar attached to the Jamshedpur branch of the Bank. On 23rd July 1946 he was one of the two poddars who were in the shroffing room and was given three bundles each of 10 rupee notes of the value of Rs. 10,000 for testing. The other poddar Chandrika Prasad Singh was similarly given three other bundles each of 10 rupee notes of the value of Rs. 10,000. His case is that having been asked by the Head Cashier to collect the dues of the Bank against the Bogra City Bank he left the room when the other poddar Chandrika Prasad Singh was sitting there and that on his return there after 20 minutes the shortage of one bundle of notes of the value of Rs. 10,000 was discovered. His services were terminated by giving him a month's salary in lieu of notice on 1st August, 1947, more than a year after the date of the occurrence. The Bank's case is that he was dismissed on account of his gross negligence in leaving the money unattended to while going on an errand outside the Bank. The matter was immediately reported to the police who examined several persons and submitted their report on 7th August 1946, suspecting him and the other poddars and some others. The shroffing room is an enclosure where the money testers sit and count the money and the door leading to which is just in front of the Head Cashier's seat. The Agent reports that it is not possible for any outsider to enter the room without attracting the Head Cashier's notice. He submitted his explanation and after the termination of his service he made representations to the Bank in all of which he mentioned the names of the persons that were present inside

and outside the enclosure and the statements made by the other poddar and others that the notes were there in the shroffing room after he had left. The Head Cashier did not suspect him and the Agent reported that the Head Cashier was inclined to believe that the theft was the organised work of some of their own men in the cash department who, taking advantage of Chhagan Lal's carelessness, had removed the bundle of notes. It is also stated in the report that he does not pull on very well with others in the department. The Head Cashier who executed a deed in favour of the Bank holding himself responsible for the loss to the Bank as also for the conduct of the poddars has paid in the sum of Rs. 10,000 to the Bank and in his turn taken promissory notes from his poddars each bearing a proportionate burden of the loss (*viz.*, Rs. 2,000). The Head Cashier has stated that it has not been possible satisfactorily to fix the guilt on any person. He has not withdrawn the guarantee for Chhagan Lal nor made any recommendation for the termination of his services. Dr. Gupta on behalf of the Bank admits that as regards the poddars the opinion of the Head Cashier is the determining factor in allowing them to continue in service. As the facts of the case do not point to Chhagan Lal's guilt, in his memorandum addressed to the Local Board the Secretary and Treasurer stated on 23rd July 1947, "Babu Chhagan Lal Mundra, whether guilty or not, was grossly negligent and was primarily responsible for the loss" and that accordingly his recommendation for the termination of this employee's service was accepted by the said Board. It must be remembered that when Chhagan Lal left the notes in the shroffing room Chandrika Prasad was admittedly there; and it has been brought to our notice that the practice prevailing in the office is that if any one of the poddars remain in the shroffing room or enclosure when another poddar has to go out, the notes left there are taken care of by the poddar who remains inside. It appears from the letters of the Deputy Secretary and Treasurer (dated 16th October 1946 and 8th November 1946) to the Agent as also from the officiating Secretary's memorandum (dated 25th September 1946) to the Local Board that the procedure followed at this branch in regard to the examination of remittances was considered as far from satisfactory and that the Head Cashier and the other departmental staff were regarded as not fully alive to their responsibilities; for these reasons directions were given as to how the examination of remittances should be conducted. In the Deputy Secretary's letter to the Agent dated 16th October 1946 the view was taken that the loss was mainly caused by the Head Cashier's lack of appreciation of his responsibility and the defective procedure adopted by him for the examination of the remittance. It appears to us clear that the Bank would not have taken serious view of the matter if Chhagan Lal had drawn the attention of the Head Cashier or the other money-tester Chandrika Prasad when he had left the room. Having regard to the prevailing practice it seems that when he left the room he felt that the presence of Chandrika Prasad was a sufficient safeguard against possible theft. In our opinion the order made by the management in this case was an unjust order particularly in view of the fact that it was made a year after the incident and after the Head Cashier had taken from him a promissory note for Rs. 2,000. We, therefore, direct his reinstatement within one month of this Award becoming operative and the payment to him, within the same period, of the pay and allowances he would have been entitled to, if his services had not been terminated, during the six months next preceding his reinstatement.

Nabin Chandra Tewary (*No.* 12):

He was a Record Keeper of the Gaya branch, having been appointed in 1940. He was confirmed in 1942, suspended on 29th October 1948 and discharged from

service on 1st January 1949 after payment of one month's salary in lieu of notice. The Bank's case is that he was involved in the removal from the ledgers of 1942-43 and 1943-44 of the folios relating to one constituent Rohtas Industries, Ltd., No. 2 copies of which the Bank had been called upon to furnish by the Income-tax Investigation Commission. On receipt of the notice the Agent called upon Tewary to put up the necessary ledgers, when he reported that the said folios were missing. The matter was reported to the police and the latter made a report to the effect that there was no direct evidence to put Tewary on trial for the removal of the records, but they suggested departmental action against him. This report was made at the close of August 1949 and reached the hands of the Bank at a later date, but before that he had already been discharged. Prior to the discharge the Gaya Agent of the Bank held an enquiry and questioned Brij Behari Singh, cashier of the Gaya branch, Ramchand, cashier-in-charge at Dalmianagar and Tewary. From their statements it appeared that they were approached by one person on behalf of this constituent and requested to supply him with certain statements of his account, for which service he offered some money. None of these employees admitted having removed the folios. Tewary submitted an explanation on 25th October 1948 as follows: "A man of.....concern came to me last Saturday or Sunday and requested me to give a statement of Accounts, the head of which was not properly known to him. I told him unless you can give me the folio or give the Head of the Account it is not possible for me to supply the statement. He promised that he will be coming again on the coming Sunday. The said man came yesterday in the office who inquired of B. Brij Behari Singh from Bihari Ram. Bihari told me to identify him. After identifying the man, I informed the Agent that he has come. The Agent told me to detain the man for some time, which was done. But after a long time, say an hour, at about 4.30 as the Agent told me to let him go and he went away. The Agent made a report to the Local Head Office on the 16th November 1948 giving the particulars of his enquiry, and he also forwarded the service records of all the three employees. On 21st December 1948 the Secretary and Treasurer submitted a memorandum to the local head office recommending the dismissal of all the three, including Tewary. It has been contended on his behalf that no reasons were assigned for his discharge and no opportunities were given to him for being heard and that whatever evidence is available would not be sufficient to get him convicted in a court of law. There is no doubt in our mind that he knew what the charges were against him; when questioned he submitted an explanation and the Bank followed Rule 48 contained in its Book of Instructions, which requires a full report to the local head office accompanied by the employee's explanation. We are satisfied that the Bank has duly considered all the material facts in this case and found that it would not be in its interests that he should continue in its service. We are, therefore, unable to hold that the termination of his services amounts to victimisation and accordingly, we do not give any directions.

Gopinath Roy (*No.* 17):

This is a case of alleged wrongful suspension. Dr. Gupta on behalf of the Bank stated that the employee was no longer under suspension and counsel for both parties agreed that no order was necessary. Accordingly we give no directions.

Panchkauri (*No.* 24):

The complaint is that he was forced to work overtime. This was denied by Dr Gupta on behalf of the Bank, and Mr. De did not press the complaint. We do not interfere, therefore, in this case.

Biren Banerjee (*No.* 28):

This is a case of alleged demotion. As the Bank agreed to consider his case for promotion Mr. De did not press this case. We, therefore, give no direction.

Indra Prakash Sangal (*No.* 29):

The Association by a letter dated 8th September 1947 wanted this case for promotion to be considered. The Bank agreeing to consider the case, Mr. De did not press for an order.

The following cases were similarly not pressed:

H. L. Tandon (*No.* 3):

A case of alleged delay in making promotion.

Kalyan Singh and Ramji Singh (*No.* 31):

Which are cases of alleged victimization.

Krishna Bahadur (*No.* 38):

A case of alleged non-payment of bonus.

D. S. Bhatt (*No.* 41):

A case of alleged wrongful suspension.

Sardar Kartar Singh Bindhu (*No.* 9):

This is a case of alleged wrongful dismissal on 3rd January 1949. He joined the Bank on 1st November 1931 and he became the Head Cashier of the Abbotabad branch in 1946, in which capacity he continued till 3rd November 1947 when communal riots broke out. On that date he and Mr. Bahl, Agent of the Bank, were escorted by a military lorry after both of them had handed over their respective charges to a European officer Mr. Abel. The said branch was closed in November 1947 by Mr. Abel after a portion of the currency chest had been handed over to the Treasury Officer and the remaining portion locked in the strong room. In June 1948 Mr. Abel came to the branch accompanied by two poddars from the Lahore branch and despatched the currency chest balanced including Rs. 58,90,000 in whole rupees (including Rs. 45,000 in quaternary rupees) and currency notes. The quaternary rupees and the small coin balance of Rs. 52,875 were handed over to the Lahore Mint and the remaining notes and coins to the Lahore branch of the Reserve Bank of India. The Bank's case against Bindra is as follows: On examination of the remittances in respect of the quaternary rupees and small coins a total net deficiency of Rs. 5,860-0-9 was found, including Rs. 5,692 in counterfiet quaternary rupees, out of which Rs. 3,800 were in two bags containing Rs. 4,000. There was also a deficiency of Rs. 1,033 in the remittance of currency notes. The boxes containing the remittances were received in good condition with seals intact. All this showed that there could not be any tampering with the remittance in transit, and therefore, the coins, and notes must have been in the currency chest before the Branch was closed and as such the responsibility for them lay on Bindra as Head Cashier. He was asked to reimburse the Bank under the terms of

his agreement as Head Cashier but he refused to do so. His services were accordingly terminated after giving him one month's salary in lieu of notice.

Bindra's case is as follows : Till the time he made over charge to Mr. Abel, all the bags in question were weighed and checked by him as well as Mr. Bahl., the Agent, twice a year ; all transactions were carried on strictly in accordance with the instructions contained in the Bank's Book of Instructions and Resource Manual and in such operations no deficiency was discovered. All denominations of notes used to be counted by the cashiers, himself and the Agent before placing them in the currency chest, and, therefore, when he was informed that there were many mutilated notes and that the shortage included a hundred-rupee note he suspected that the new inexperienced staff that had been recruited by the Reserve Bank were responsible for the state of things complained of. When he had taken over charge of the currency chest in October 1946 he had weighed all the bags and made the cashiers put fresh poddar slips on the bags with their full signature ; but out of the 27 slips which were sent to him for inspection and comment with the Bank's letter of 13th October 1948, he could identify only six slips and that the initials on the rest did not appear to be familiar to him, those slips mostly bore only one date, *viz.*, 22nd February 1945, which shows that such remittance must have been from the Reserve Bank of India at Lahore, such a large amount could not be received by the small branch at Abbotabad on one particular day. One of the slips showed Rs. 1,826 as counterfeit out of Rs. 2,000, which was impossible. The grand total of the 27 slips comes to Rs. 2,953 whereas the memorandum dated the 17th September 1948 by which an explanation was asked for from him showed Rs. 5,859-14-6. Since he left Abbotabad, the work of handing over a part of the currency chest to Treasury Officer, packing off the remainder, sending it to Lahore, and examination there was all done without his knowledge and in his absence, he could not, therefore, be held liable on any account.

In the correspondence disclosed we find a letter dated 21st September 1948 from Mr. Bahr, then Agent of Simla branch, addressed to the Manager, Lahore district. It states : " With reference to the endorsement on copy of your D.M. Special letter No. 16-609 dated 17th September 1948, with enclosures, addressed to Mr. M. L. Puri, I beg to advise that my verification of the above currency chest at the time of my taking over Abbotabad branch on 17th August 1947 was carried out strictly in accordance with the instructions contained in para 8, Chapter VIII of the Bank's Book of Instructions and Article 20 of the Resource Manual and no deficiencies came to light. All subsequent transactions in the above chest during my taking of office were similarly confined to the above instructions. All one hundred rupee notes were at the time of taking over and on subsequent occasions were personally counted by me, and the shortage of one hundred rupee note as revealed by the recent examination of the remittance is most intriguing. Under the above circumstances, I regret I am at a loss to explain the deficiencies which have come to light."

Paragraph 8 of Chapter VIII Cash Department Booklet No. 1, provides as follows :

> " Before taking notes and coin into ' joint custody ' balance the supervising official will check their correctness in the following manner :—
>
> (*i*) He will personally count all notes of denominations above Rs. 10 and will verify on the ' clip system ' as large a proportion as practicable of all other notes.....

(*ii*) He will have all bags of rupees and half-rupees weighed in his presence and a number of bags emptied to show that the contents are genuine coin. Out of one or two bags he will take and count a few rupees and have the remainder counted in front of him as a similar check to 'clip system' for notes; this he will also occasionally have done in the case of small and uncurrent coin."

The statement of Mr. Bahl substantially corroborates what has been stated by Bindra in his explanation and his representations to the Bank. It appears from the letter of the 17th September 1948 addressed by the Manager to Bindra that the bags containing the coin remittance having been individually weighed it was discovered that some of them were below the normal weight of Rs. 2,000 tolas Mr. Bahl has said that during his time, *i.e.*, from 17th August 1947 till 3rd November 1947, he used to follow the instructions contained in the booklet referred to above and that he verified the currency chest (by weighment of the bags containing coins) at the time of taking over charge on 17th August 1947. If his statement is correct, and we have no reason to think otherwise, particularly as no comment has been made by the Bank on this statement nor any explanation was directly called for from him nor any step taken against him, no shortage in weight in all probability, could have existed so long as Mr. Bahl and Bindra were at Abbotabad. In his memorandum to the Local Board the Secretary and Treasurer, after stating facts relating to the deficiency, concluded as follows: "As, in addition to the above irregularities, high denomination notes of Rs. 1,000 each, which should, under no circumstances have been accepted, were found in the Branch currency chest remittance, as already reported to you (*vide* our Memorandum dated the 5th November 1948, re-submitted herewith), it is obvious that there has been gross lack of supervision, if not actual dishonesty, in the Branch Cash Department, for which we must hold the Branch Head Cashier, Mr. Kartar Singh Bindra, responsible in terms of his Agreement with the Bank. We accordingly recommend that Mr. Bindra should be called upon to make good to the Bank the deficiencies in question and that, if he fails to do so, we should terminate his services by paying him one month's salary in lieu of notice, no reasons being assigned." Accordingly Bindra's services were terminated after giving him one month's salary in lieu of notice but without assigning any reasons. Bindra next appealed to the Bank for re-consideration of his case protesting his innocence and mentioning his loyal services for 17 years and his plight as an evacuee, and he offered to pay a fine in order "to retain his job, his only support" and said that he would try his best to recover the amount from the cashiers as well as from their security deposits with the Bank, but the Bank refused to reconsider his case. In the papers disclosed by the Bank before us we do not find that he was asked to give any explanation regarding the high denomination notes of Rs. 1,000 nor does any complaint based on this fact find any place in the statement filed by the Bank before us. We do not know to what extent the statement by the Secretary and Treasurer regarding the high denomination notes influenced the decision of the Local Board in terminating this employee's services. There is, besides, no indication that the explanation offered by Bindra or the letter of Mr. Bahl referred to above, which undoubtedly merited careful consideration, was placed before the Local Board. Lastly, we are unable to understand why the Secretary and Treasurer should have recommended to the Local Board that no reason should be assigned for the termination of Bindra's services. Bindra has complained that the cashiers who worked under him, and who would also be responsible under the terms of their respective agreements, were all allowed to resign by the

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Bank without any reference to him, so that it became impossible for him to recover from them their respective contributions in respect of losses or deficiencies. Taking into consideration all the circumstances of this case we are of opinion that the order terminating the services of Bindra cannot be allowed to stand. We, accordingly, direct his reinstatement and pay to him of his pay and allowances with effect from the 3rd January 1949 within a month of the publication of this Award.

Ramji Das Gupta (*No.* 13):

He was a despatch clerk at Alwar and his services were terminated on the 4th of January 1949. The complaint in this case is that he was not furnished with any charge or any complaint such as was to have been taken into consideration by the Bank, that, therefore, termination of his services is wrongful. The Bank's case is that he used to misappropriate small sums of money out of the money advanced to him as despatch clerk by making fictitious entries in the Postage Register, that the matter was detected by the Agent and that the explanation offered being very unsatisfactory his services were terminated after payment of one month's salary in lieu of notice. The Bank addressed a memorandum dated the 11th August 1948 to him asking for an explanation, and there it was stated that certain covers were to be posted on the 10th August and entered in the Ordinary Postage Book on that date, but that on the matter being investigated the following discrepancies as noted against the entries noted below were found :

Letter No.	Addressee	Place	Postage	Agent's Remarks
D-1249/50	I.B.I.	Ahmedabad	0-1-6	No such cover.
S.C.P.A.	„	Indor ..	0-1-6	Do
D.D.P.A.	„	Mawana ..	0-1-6	Do
D.P.	D.M.	Kanpur ..	0-2-6	Entered twice. Had these Letters been posted separately stamps of
S.L. 29/90	„	Kanpur ..	0-2-6	As. 0-1-6 on each would have been sufficient.

He submitted an explanation with regard to the instance mentioned above. His explanation was that he had prepared the covers of ordinary *dak* and entered them in the Register with the envelopes as usual, that out of many other articles for despatch under registered covers he had found three of them to be sent to Ahmedabad, Indore and Mawana whose covers had already been prepared as for the ordinary *dak* and that "taking into consideration the economy he put the registered *dak* contents into them and despatched (them) but forgot to delete them from the Postage Book". With regard to the envelopes addressed to the D.M., Kanpur, his explanation was that he intended to sent them separately and entered the postages, *viz.*, 0-2-6, accordingly and that he took out the requisite stamps for affixation, that in the meantime he discovered that there was already one cover for the D.M. and finding that both of them could go together he put the letter No. S.L. 29/90 in that cover and that he went home leaving the other entry to be deleted next morning. If these instances stood by themselves the Bank might have taken a lenient view of the situation, the deficiency being only Re. 0-4-6. But it appears from the letter of the officiating Manager to the Secretary and Treasurer dated 10th November 1948 that pursuant to the Head Office's letter dated 8th October 1948 he scrutinised the entries of the Postage Book for 6 months ending 9th August 1948 and discovered certain other instances of more than one cover having been sent to the same branch on the same day bearing the same number twice in the Postage Book. Nothing has been produced before us to show that any explanation with regard

to those instances was at all called for from Gupta. Those instances were obviously taken into consideration by the Bank in terminating his service, as is clear from its statement before us that "he used to misappropriate small sums of money out of the money advanced to him as despatch clerk by making fictitious entries in the Postage Register". This does not seem to us to be the correct method under Rule 48 of the Book of Instructions. In these circumstances we would have directed Gupta's reinstatement, without imposing any conditions, but we are unable to do so as his explanation in respect of the instances mentioned in the letter of the 11th August above mentioned, was in our opinion, rightly considered by the Bank as unsatisfactory. He has asked for clemency and the Association has given an undertaking that if he is again guilty of any misconduct in future the Association will not take up his case. That being the position we think that the ends of justice will be met if he is reinstated with payment of salary and allowances for only two months next preceding his reinstatement within a month of the publication of this Award; and we direct accordingly. In our opinion the loss of pay and allowances for the intervening period can be considered as sufficient punishment for his past misconduct.

Thakur Ganga Prasad (*No.* 10):

He was a godown keeper at Gorakhpur and was dismissed on 14th January 1949. The complaint is that the order for dismissal was in contravention of Rule 48 as contained in the Bank's Book of Instructions. The Bank's case is that his services were terminated because his work was found unsatisfactory in that he used to borrow money from the Bank's constituents, and that he stole a signed blank cheque belonging to a constituent firm and got it cashed for Rs. 3,500. In February 1948 Mr. J. C. De was the Agent to the Gorakhpur branch. He left that branch in March 1948 and was succeeded by Mr. Mookerjee. While Mr. J. C. De was the Agent there was a complaint by one Cholairam of the firm of Messrs. Bindaram Cholairam that Thakur Ganga Prasad had misappropriated Rs. 3,500 from his firm's account with the Anandnagar Pay Office by taking away a signed blank cheque and getting the same cashed through a local man of Anandnagar on 14th February 1948. Mr. De thereupon investigated the matter and on his suspicions being aroused he warned him of the serious consequences that were likely to follow in the event of his guilt being proved. Ganga Prasad thereupon deposited a sum of Rs. 3,500 with Mr. Tripathi, Clerk-in-charge at the Basti Pay Office so that if on enquiry Mr. De was satisfied that he was guilty the money would be paid to Messrs. Bindaram Cholairam. As Mr. De was under orders of transfer he was anxious to complete the investigation and settle the matter and accordingly sent telegrams and wrote letters to Ganga Prasad at Patna. About the middle of March Ganga Prasad arrived and wanted to settle the matter with Cholairam; later he told Mr. De that the matter had been amicably settled. Accordingly the money was sent by Tripathi to Ganga Prasad who in his turn paid it to Cholairam on the 22nd in the presence of Mr. Mookerjee, the incoming Agent and two others. Cholairam thereupon requested Mr. De to treat the matter as closed. Mr. De could not agree to that and wanted to report the matter to the authorities unless Ganga Prasad resigned, which he promised to do on the expiration of his leave. As Mr. De was under orders of transfer and went to Delhi he left instructions with Mr. Mookerjee to inform him if he tendered his resignation.

All these matters are contained in a report dated the 27th November 1948 submitted by Mr. De to the Manager, Kanpur District. The officiating manager in his turn sent a full report to the local head office along with the report of Mr. De. Before that an explanation was called from Ganga Prasad by a letter dated the 29th July 1948. In his reply Ganga Prasad said, "I shall indeed be glad if you kindly take up the question of Rs. 3,500, as I have to get back the amount, as soon as the matters are completely investigated by you. I undertake to satisfy you or any other independent tribunal that Messrs. Bindaram Cholairam had no claim either against the Bank or against me, if at all he was defrauded by third parties, with whom we have no concern. I would request you to kindly let me know who is holding the sum of Rs. 3,500 in deposit". On the 14th August 1948 Mr. S. N. Mookerjee addressed another letter to him asking for a comprehensive report in regard to the sum of Rs. 3,500; and in reply he stated that on account of his mother's illness he had taken 20 days' leave and that during this period the question of this cheque for Rs. 3,500 had cropped up. "My mother happended to be seriously ill and she was in urgent need of being taken to Patna for medical treatment; I therefore, took 20 days' leave from 20th February 1948 and proceeded to Basti where my parents and relations were staying, to take my mother to Patna, but at Basti it was decided that I should proceed to Patna and fix up a place for lodging. Accordingly I left Basti for Patna. Mr. J. C. De the then Agent went to Basti and hearing that my parents were there, he sent for my uncle and he asked him to call me from Patna but I happened to reach Basti the same day, instead of being allowed to proceed to Patna with my mother, Mr. J. C. De sent me to Anandnagar and then to Natanwa to find out what the position was and to inform him immediately to inspect the stock at Natanwa. Mr. J. C. De then went to Natanwa and wanted me to stay on or to deposit a sum of Rs. 3,500 provisionally. I and members of my family were greatly apprehensive about the illness of my mother because my father was also seriously ill. In that state of emergency we naturally chose to deposit a sum of Rs. 3,500 with Mr. D. M. Tripathi under the instructions of Mr. J. C. De relying on the fact that money in no case would be lost to me. I thus got free and took my mother to Patna where she was treated in the Medical College. I was again called back for the purpose of enquiry but I was not in a position to stay at Gorakhpur". There cannot be any question that in this case Rule 48 was followed. Before us Ganga Prasad gave evidence, and the Bank also examined Mr. De. It was, however, agreed by learned counsel, on both sides that they would proceed for the purposes of this enquiry alone upon the documentary evidence only and would not call further witnesses. As we find that the Bank complied with the rule and dismissed Thakur Ganga Prasad on a genuine suspicion about his complicity we do not consider it to be a case in which we should interfere. We give no directions, accordingly in this case.

Mr. B. N. Tewari of Kanpur Branch (No. 22):

He was appointed a clerk in 1921 and confirmed in 1924. On 9th November 1940 his pay was reduced from Rs. 71-8-0 to Rs. 50 and again restored to Rs. 71-8-0 on 7th January 1941. On 19th September 1947 he was asked to submit an application for retirement but was later on allowed to continue in service. His complaint is that on 7th November 1947 his pay was fixed at Rs. 90 with no further increments, and he was not placed in any grade, and that he has been deprived of the benefit of the Award of Mr. R. Gupta. The Bank's case is that in December 1940, the District Manager, Kanpur branch reported that his work was much below the standard expected from an employee

of his seniority, and that the only work he was capable of doing was writing up the note registers in the cash department. It is further stated by the Bank that his pay was increased from 71-8-0 to Rs. 90 with effect from 1st July 1946 under Mr. Gupta's award and that he was called upon to retire in October 1947, but that an extension of service was granted on condition that he should not receive any further increment in his salary.

It appears from the report of the Manager above-mentioned that he worked in the cash department ever since he joined the Bank where his work consisted in dealing with translations from the vernacular, preparation of returns, etc., and that on account of certain office adjustment he was transferred to the clerical department where he proved of little use. His transfer to the cash department was strongly urged by the Kazanche under whom he had worked in the cash department, which shows that he was considered useful in that department. The Manager retransferred him to the cash department but on a reduced pay of Rs. 50. The officiating Deputy Secretary and Treasurer of the Bank, feeling that there was no justification for the reduction of his salary after 19 years of service, restored his pay to Rs. 71-8-0, adding however, that he must not expect any further increment in his substantive salary. In 1947 his salary was increased to Rs. 90 under Mr. Gupta's award ; but in October 1947 he was asked to retire but was allowed to continue his service on condition that he would not receive any increment beyond Rs. 90, although under Mr. Gupta's award the maximum pay of the grade in which he was put was Rs. 126. His appeal to the Secretary and Treasurer of the Imperial Bank against this order was rejected on 7th November 1947 and he was informed that the decision had been arrived at after full consideration. It is contended by Mr. Ghouse that he is entitled to the increment as a matter of course and that as his age was 48 years and 6 months he should not have been asked to retire nor could be permitted to continue in service by depriving him of the due increments till he reached the efficiency bar at Rs. 126. Dr. Gupta on behalf of the Bank contends that the question of payment of increment is dependent upon the quality of the work done by an employee and that increments cannot be claimed as a matter of right. It is, however, obvious that even on the basis of this argument an increment can be stopped only as a punishment; if so, before such punishment is inflicted the normal procedure, of informing the employee concerned of the grounds of the action proposed against him and giving him an opportunity for explanation ought to be followed. It seems to us an extraordinary procedure, in any case to stop an employee's increments in advance as was done in the present case. The order made in this case cannot be allowed to stand, and we direct that Tewari shall be given the increments due under the Award of Mr. R. Gupta and that the arrears due to him until the date with effect from which the Award becomes effective shall be paid to him within a month of such date.

C. D. Saraf :

He was the clerk-in-charge of the Mianwali Treasury Pay Office from 1st January 1945 till it was closed in March 1947 due to communal disturbances. He stuck to his post all alone while the members of his family who were later all killed in the said disturbances, were living at his native place, Chiniot. He made representations to the district Manager, Kanpur, narrating all his misfortunes and requesting that he might be compensated as far as possible. He applied for promotion but was unsuccessful although it is alleged, persons who were junior to him got promotions. His claim is for promotion because of the services rendered to the Bank during the communal disturbances and because of the fact that some of his juniors got promotions. The Bank's case is that since

his evacuation from Mianwali he was posted as the clerk-in-charge of the Pratabgarh Treasury Pay Office and when on the 15th March he asked for promotion he was informed that the question would be considered at the appropriate time along with similar questions relating to other employees. This is also the statement made by the Bank before us. In these circumstances we do not think that any directions from us is called for and we give none.

Rama Kant Jha (*No.* 21):

He was a godown keeper at Dalsingsarai under the Laheriasarai (Darbhanga) branch and was dismissed on the 16th September 1948. He had been appointed on the 4th June 1930, and had, therefore, put in more than 18 years' service. On the 11th May 1948 he applied for two days' leave on account of the anniversary of the *sradh* ceremony of the deceased father. On the 14th May the local agent found him absent from the station and also found the two godowns of which he was in charge and which contained the borrowers' goods open. The agent met him at Samastipur Station when he tried to justify his absence on grounds which were considered unsatisfactory. He had also similarly absented himself without leave, leaving the godown in his charge uncared for, while he had been posted at Janak Road Station. Accordingly, his services were terminated after paying him a month's wages in lieu of notice. On the 14th May he wrote a letter to the local Agent of the Bank saying that having made an application on the 11th May for leave when no order granting the leave came, he went to see the Agent at Laheriasarai and returned by the next available train, that on reaching Laheriasarai he had come to know that the Agent had gone towards Samastipur and that, as the train from the direction of Samastipur came over at Laheriasarai about the same time he returned by that train and met the Agent at Samastipur. He further stated that when he had left Dalsingsarai he had locked one of the godowns himself and that the owner of the other godown had locked the other one. On the 31st May 1948 the Agent at Darbhanga made a report to the Secretary and Treasurer of the Bank to the effect that when he had gone to Dalsingsarai, he had found both the godowns open and learnt that the godown keeper had left telling others that he had obtained leave from the Agent to be present at the anniversary of his deceased father's *sradh*, that when he had come to Samastipur he had met the godown keeper there who had told him that he had gone to obtain permission for leaving his station and that as a matter of fact the godown keeper had not gone to Darbhanga at all. In the same letter he also stated that when Jha had been posted at Janak Road he had similarly found him absent from his station and that after his transfer to Darbhanga he (the Agent) had learnt that he never used to stay over-night, or even the best part of the day, when he had been posted at Janak Road. The letter concluded, "In the circumstances stated above, I am unable with safety to entrust Babu Rama Kant Jha with the charge of godown and shall be obliged if the Head Office will kindly arrange for his replacement as soon as possible". Jha has produced a letter purporting to have been written by the Secretary of his Association to the Station Master at Laheriasarai who has made an endorsement thereon that on the 14th May 1948 the 112 down train arrived there at 10-30 (A.M.) and left that station at 10-55, crossing the 141 up which had arrived at 10-52. This letter with the said endorsement is filed because Jha's story of the two trains crossing at Laheriasarai was characterised by the Bank as false. The local board of the Bank decided this case on the 8th September 1948 when they came to the conclusion that (1) Jha had left the two godowns open, (2) that this statement that the train from Samastipur crossed at Darbhanga, thus enabling him to

meet the Agent at Samastipur, was false and (3) that this was not the first occasion when he had left his station without permission.

It is clear that no explanation as to (2) and (3) was called from Jha Mr. De on behalf of the Association accordingly contended that it could not be said how the three (circumstances had operated on the mind of the Board and that Jha should have been called upon to explain all the three charges and not only one of them).

Hiralal, who was the Agent of the Bank at Laheriasarai in May 1948, was examined as a witness. He said that he considered Jha's previous absence from Janak Road and Jha's having lied about having gone to Laheriasarai as serious and that he took these matters into consideration in making his report. He also said (1) that when a godown keeper asked for leave it was granted on a substitute being found or given, and that if one was supplied by the applicant the latter had to be responsible for the substitute's conduct, (2) that on the 14th May, Ajodhya, the borrower in the case of one of the godowns, deposited the amount due from him and obtained a delivery order, (3) that he had got a writing from the station master of Laheriasarai that the two trains in question did not cross at his station on the 14th May, and (4) that he did not question the station master at Samastipur as to the timings of the trains.

Mr. De has argued that Jha, having applied for leave on the 11th May and not having obtained any orders on his application, would very naturally want to go Laheriasarai to find out whether he could attend his father's *sradh* ceremony and that the endorsement on the letter produced by Jha shows, that the two trains did cross at Laheriasarai, so that one of the grounds which influenced the Local Board in dismissing Jha was not correct. As to Ajodhya's godown he contended that either the delivery order was shown to Jha before he left his station or that Jha acted on confidence reposed in Ajodhya, the responsibility being his and the time at his disposal being very short. As to the other godown he contended that Jha might have left the key with the manager in whom he had full confidence. That such confidence was justified in the both cases was shown according to Mr. De, by the fact that the Bank had not incurred any loss, so that Jha's conduct would be irregular at the worst and, the therefore, the penalty imposed on him was excessive.

We are inclined to hold that there is considerable force in Mr. De's argument. The Local Board of the Bank was certainly not justified in terminating Jha's services when he had been asked to explain only one out of the three circumstances which were considered by the Board and when, according to the local Agent, the other two circumstances on which his explanation was not obtained were considered by him as serious. As the letter of the station master produced by Jha shows, he was in all probability not lying on the point of the trains having crossed at Laheriasarai on the 14th May and there is a great deal of probability in his story that not having obtained the leave he had applied for and time being short the thought of going to Laheriasarai in person to enquire what had become of his application. He probably did not tell the truth when he said he had locked one of the godowns himself and that the other godown was locked by its owner. In all probability he knew that Ajodhya, the owner of one of the godowns, had obtained or was going to obtain a delivery order and that as regards the other godown its manager could be trusted to see that no part of the borrowed goods was removed in his absence. In the case of both the godowns if any loss occurred he would be personally held responsible. It appears to us that the Local Board took an unduly serious view of Jha's conduct though it was not above reproach. In the circumstances the ends of justice

will be sufficiently met, in our opinion, if he is reinstated but is not given any wages or allowance for the period between his dismissal and the date of his reinstatement, and we direct accordingly.

Rama Kant Agnihotri (No. 25):

He belonged to the Sitapur branch and was dismissed on the 10th December 1948. The Bank's case against him is as follows. He was arrested on the 10th December 1948 on account of his activities as a memeber of the Rastriya Swayam Sevak Sangh, a political organization which had been declared unlawful by Government, and was sentenced to undergo three months' rigorous imprisonment and a fine of Rs. 500 or in default, a further six weeks' rigorous imprisonment. As a result of his arrest and imprisonment he was unable to carry out the terms of the contract with the Bank and was, therefore, dismissed with effect from the 10th December 1948. The complaint of the employee is that no charge was given made on the 18th April 1949 and it was stated therein that it was to have retrospective effect from the 10th December 1948. From the 10th December 1948 to the 20th January 1949 he was given privilege leave and the Bank now wants a refund of Rs. 163-13-2, being the excess of pay drawn by him after the 10th December 1948. The complaint of the employee is that no charge was given to him and no explanation called for and that paragraph 48 of the Book of Instructions was not followed. That paragraph reads thus :- "No employee of the Bank can be dismissed without his case having been first submitted to the local Head Office for orders. A full report must be sent to the local Head Office, accompanied, if possible, by the employee's explanation of the offence with which he is charged". It was pointed out that the Government's ban on the R.S.S.S. had now been removed and it was suggested that he should be reinstated with effect from the date when the ban was removed. It was contended on his behalf that when Government removed the ban on the R.S.S.S. his case ought to have been reviewed by the Bank, that as his imprisonment for belonging to an unlawful organization did not necessarily involved moral turpitude or make him unfit to discharge his duties. He should now be reinstated and that the Bank should not be allowed to recover Rs. 163-13-2 from him. We are unable to accept this contention for it cannot be said that the Bank was not justified in terminating his services when he was convicted by a Court of law, and it was not incumbent on the management to make a distinction between a conviction involving and one not involving moral turpitude. As the order regarding dismissal was properly made, we are not inclined to interfere, except giving the direction that the amount he had been asked to refund should not be recovered from him and leaving his case to be reviewed by the Bank authorities if they deem such review necessary or desirable.

Prakash Chand Chopra (No. 33):

The Bank's case against him is as follows :- He took leave in Mach 1947 on the plea of his mother's illness and this was found to be false on enquiry. He was thereupon instructed to resume duty at once at Abbotabad and was informed that if he failed to do so he would be considered as having voluntarily vacated his appointment. Thereafter he stated that he was not prepared to go to Abbotabad and asked for transfer to some station in the Indian Dominion, which request according to the Bank, was refused on principle as otherwise the Bank would have been inundated with similar applications from other employees which it would have been impossible to grant. Chopra had a poor record of service and his services were terminated after paying him one month's salary in lieu of

notice. He had been appointed on 11th December 1941 and he was on leave from March 1947 to the 8th September 1947. In a report made by the officiating Manager of the Lahore district to the Secretary and Treasurer dated the 31st August 1947 a statement is given of the different occasions on which Chopra had applied for leave and it was stated that on the last occasion (14th July 1947) he was told to resume duty forthwith at Abbotabad failing which he would be considered as having voluntarily vacated his appointment. To this Chopra replied on the 24th July 1947 that he was still unwell and was being treated and that he would not be prepared to go Abbotabad branch " where hundreds and thousands brethren of mine have been slaughtered like dogs and deprived of their property by means of violence. The place where the life is quite uncertain and unguaranteed, the question of going in that area does not arise. I am under no circumstances going to vacate my job and again and again request the authorities to transfer me to a place where I should be safe ". It is admitted that communal disturbances broke out in the Frontier Province in March 1947 and that the Abbotabad branch had to be closed in November 1947. On the 8th September 1947 Chopra wrote to the Agent of the Imperial Bank of India at Abbotabad that due to unsafe conditions of travel and absence of communications, on the expiry of his leave on the 8th September 1947 he had reported for duty at the Bank's pay office at Nabha instead of joining at Abbotabad and he further asked for instructions suggesting that he should be posted in the East Punjab. On the 9th September the clerk-in-charge of the Nabha pay office wrote to him saying that his letter would be forwarded to the Ludhiana Head Office for necessary orders at his risk and responsibility as in those days the pay office was cut off from Ludhiana, no mail having been received from Ludhiana during the previous two weeks. On the 9th October 1947 Chopra wrote to the Agent, Imperial Bank at Ludhiana, again suggesting that he should be posted if possible to the Nabha pay office. A reply was sent to this letter by the Agent at Ludhiana on the 27th October 1947 that he " may report at Ambala Cantonment branch when further instructions regarding your posting will be issued to you by that branch." It will be observed that this date is after the date of his dismissal, *viz.*, the 17th September 1947, and this suggests that communications in Punjab were in a very disturbed condition at the time. In a letter written by him to the General Secretary, Imperial Bank of India Indian Staff Association at Calcutta, he stated that he had received a letter from the Abbotabad branch that his services had been dispensed with on the 10th November 1947 though the said letter was dated the 17th September 1947. On the 27th November the General Secretary of the said Association wrote to the Secretary and Treasurer of the Bank drawing his attention to Chopra's letter of the 10th November. In reply the Deputy Secretary and Treasurer said that Chopra's case had been fully investigated there and that were good and sufficient reasons for dispensing with his services. It seems that thereafter Chopra again asked by a letter dated the 17th February that he should be reinstated. To this the District Manager of the Lahore Branch replied that he could not be reinstated. Mr. De contended that in the circumstances that were prevailing at Abbotabad when the branch actually had to be closed in November the Bank was not justified in ordering that Chopra should go there at the almost certian risk of being killed. That in our opinion is the correct view to take in this case. Chopra more than once mentioned to the Bank about the disturbed conditions prevailing at Abbotabad and after the expiry of leave wanted to be posted in the East Punjab. The Bank acted on the ground that the granting of Chopra's application might have resulted in a large number of similar applications pouring in which it would have been impossible to grant. But that was not the only circumstances to be considered in his case. We are unable to hold on the facts

of this case that the non-compliance with the Bank's order showed such insubordination or disregard of duty as to merit dismissal. It seems likely that the authority which made the order was not fully aware of the state of the communal disturbances prevailing at the time or knowing the circumstances took a callous view of Chopra's responsibility and the risk to his life in case he complied with the order. We, therefore, direct his reinstatement and allow him his pay and allowances for one year prior to the date of his reinstatement.

Brijesh Narain Tewari (No. 40):

He was a cashier at the Jhansi branch and was dismissed on the 11th June 1948. He had joined service in 1939. The case against him is this. A shortage of Rs. 10,000 was found in the hand balance of one Debi Prasad, a cashier at the branch and it appeared to have disappeared while Debi Prasad had gone out to the lavatory. Tewari, who had obtained leave for that day, came to the Bank and remained in the cash department with an outsider named Baijnath when Debi Prasad had gone out. After the occurrence Tewari left the Bank. He was later found to be trying to interfere with the police proceedings. He was arrested but was not prosecuted for want of evidence. In view of these facts and the adverse report made by the police against him his services were terminated after paying him one month's salary in lieu of notice. In the report made by the local Agent to the Manager, Kanpur district, it was stated that the Head Cashier alleged that during the interval that Debi Prasad was absent he did not observe anybody in the cash department and that Debi Prasad could not give any satisfactory explanation as to why he had not locked his box when he had gone to the lavatory. It was further stated by the Agent that the branch Head Cashier J. N. Khanna was unable to make good the loss immediately but Rs. 10,000 were being debited against the protested bills account and that a letter from Mr. Khanna undertaking responsibility for the acts and intromissions of Debi Prasad was on the record of the branch. Mr. Khanna who had given a security deposit of Rs. 10,000 had not however, taken any security deposit from Debi Prasad. This letter does not suggest anything against Tewari and it is obvious that Debi Prasad was extremely careless in leaving his box open when he went to the lavatory.

On the 14th April 1948 the officiating Manager of the Kanpur district made a report to the Secretary and Treasurer of the Bank regarding this incident in which it was suggested that Tewari might have conspired with the Head Cashier to deprive Debi Prasad of Rs. 10,000, and that Tewari was a man of suspicious character and lived beyond his income and was reported to be the right hand man of the Head Cashier. The officiating Manager added, "We understand that he is one of the members of the clique in the cash department of your Bank and it appears that he is the chief person in involving Debi Prasad of Rs. 10,000." The Police expressed the opinion that Tewari was responsible for the removal of the bundle and that he should under no circumstances be allowed to work in the Bank. On the 23rd April Mr. Blair, officiating Secretary and Treasurer wrote to the District Manager, Kanpur suggesting that the Head Cashier's services should be terminated as early as possible and that he should obtain from the police as early as possible their written confirmation of their allegation regarding Khanna and Tewari. The Superintendent of police, Jhansi made a report regarding this offence on the 26th April 1948 in which he expressed the view that Tewari, Debi Prasad and Khanna were the chief persons responsible for the theft but that definite evidence could not be obtained against any of them. On the 2nd June 1948 the Secretary and Treasurer prepared a memorandum for the Local Board in which it was stated that the police, had confirmed

in writing their suspicion of Babu Tewari and in view of the adverse comments on his character he could not be considered fit for retention in Bank's service. Accordingly his services were dispensed with. When the Agent at Jhansi wrote to Tewari on the 11th June to the effect that it had been decided to terminate his services forthwith Tewari wrote on the 30th June that he had not been told the reasons for the termination of services. Again on the 6th August 1948 Tewari wrote to the District Manager, Kanpur, that he wanted to know the reasons which had led the Bank to terminate his services abruptly, even without framing a charge and calling for his explanation, and that the decision of the Bank was very arbitrary, unjust and against all canons of justice. It was contended by Mr. De that if certain circumstances had led the Bank to conclude that Tewari was involved in the theft of the notes he should have been informed of those circumstances and given an opportunity to explain and that as this was not done the action taken against him was not justified. It seems to us, however, that in the course of the police enquiry and the investigation by the Bank the circumstances appearing against him could not have remained unknown to Tewari and that he had sufficient opportunity of explaining his conduct. There can be no doubt that the circumstances throw a considerable doubt on Tewari and that the Bank would be justified even in acting on suspicion in the circumstances of this case. We, therefore, give no directions in this case.

Ram Sewak (No. 42):

He was a temporary peon at Jhansi having been appointed on the 17th October 1946 and dismissed on the 21st January 1949. The reasons alleged by the Bank for his dismissal were that he was impertinent and used to misbehave and shirk work and that in spite of warnings he did not improve. When the time for his confirmation came the Manager at Kanpur District office wrote to the Agent at Jhansi on the 20th February 1948 that the question of his confirmation should be deferred for a further period of three months and monthly reports regarding him should be sent and that he should be warned that he must improve his conduct if he wanted to be retained in service. On the 6th November 1948 the Agent at Jhansi reported to the Manager of the Kanpur District Office that Ram Sewak had shown steady improvement in his behaviour but that he had not got rid of his habit of shirking work. On the 4th January 1949 the officiating Manager of the Jhansi Branch wrote to the Secretary and Treasurer that the attitude of Ram Sewak towards other members of the staff was often far from satisfactory, that he lacked willingness to work, that he was impertinent to the head messenger of the branch and refused to carry out the duties allotted to him. He further stated that he had issued a written warning that Ram Sewak would not be confirmed in service until he showed a substantial improvement in his work and behaviour towards the other members of the staff and that strict action resulting in his dismissal would be taken in case he failed to perform his duties to the entire satisfaction of the Bank. He also wrote that according to the Local Agent, as Ram Sewak had not shown improvement in his work and that as his work had given rise to complaints from a few customers regarding misdelivery of their letters by him, his services might be terminated. The officiating Manager reported that he was not fit for retention in the Bank's service and that his services might be terminated without assigning any reasons therefor. On the 21st January 1949 the local Agent wrote to Ram Sewak to say that it had been decided to terminate his services with effect from that day and he enclosed with his letter a payment order of Rs. 30 due to him in lieu of one month's notice. On the 18th February 1949 Ram Sewak wrote a letter to the Conciliation Officer, Department of Labour, Lucknow, that the real reasons

for his services having been terminated were; (1) that he used to be called upon to attend on the Agent while he played badminton up to 7 P.M. every day, (2) that once he had been asked by the Agent to take his shoes for repairs, when he had asked the Agent to require some sweeper to do this work, (3) that in December when he had some guest in his house he had requested the Agent to get some one else to attend on him, which request had enraged the Agent, who had warned him that he would be discharged and (4) that as he used to leave his duties after office hours, he used at first to show the correct time of his departure, in the muster roll, but that owing to threats he was made to show such time as the time when the Bank used to close. In his letter he further stated that if there was anything against him he should be given a charge sheet and asked to state his defence. In a subsequent letter dated the 17th April 1949 written to the Secretary and Treasurer of the Bank Ram Sewak, with reference to the entries made by him in the muster roll, said, "I was putting always correct time but I was forced to alter the figure," and he again raised the question why no regular charge had been given to him in writing. On the 2nd May 1949 the officiating Manager, Kanpur district enclosed a copy of a letter which he had received from the Jhansi Agent in a letter he addressed to the Secretary and Treasurer of the Bank, in which the Jhansi Agent had characterised the allegations of Ram Sewak, except the one as to the Agent's shoes incident, as mischievous and with regard to his allegation regarding the muster roll he had stated that on reference to the Branch attendance register he had failed to notic any incidents where the entries originally made appeared to have been subsequently altered. The Agent had further written, "I may add in this connection that I have enquired and may assure you that no member of the subordinate staff is ever called upon to perform private work for the Agent and the working hours fixed for them under the Tribunal's award are strictly observed".

Mr. De drew the attention of the Tribunal to the memorandum dated the 18th June 1947 which was sent by the Head Office to all the Branches in which the local officers were asked, in reporting against an employee, that the Book of Instructions should be followed, that full facts should be stated and that it was not sufficient to make statements of a general nature. The Bank filed the muster roll kept by the Jhansi Branch. The muster roll shows certain days on which Ram Sewak had arrived for duty as early as 6-30 or 7-30 A.M. and left work at 7 P.M. The working hours in the office are usually upto 5 or 5-30 P.M. On four Saturdays, *i.e.*, on 21st August 1948, 8th January 1949, 14th February 1948 and 15th January 1949, Ram Sewak, according to the muster roll, worked till 4-40 or 5-20 P.M., i.e., for 7 or 8 hours when the usual time for leaving work on Saturdays was 2 P.M. It was suggested on behalf of Ram Sewak that this timing shows that he must have been working at the Agent's residence and not in the Bank. It was further contended that no particulars regarding his alleged misbehaviour or impertinence or shirking work were either supplied to the Tribunal or put to the employee for his explanation. As regard the allegation of his shirking work it was contended that it must have consisted in his not doing the Agent's private work properly. His record was no doubt satisfactory up to the entries made for September 1947 and December 1947. Thereafter Mr. Gambhir came there as the Agent and the bad entries began. Mr. Gambhir at first recommended Ram Sewak's confirmation but in February 1948 he cancelled such recommendation which had been made in his letter dated the 31st December 1947. Mr. Gambhir came to the branch in December 1947. During his time two warnings were given to Ram Sewak, on the 23rd February, and the 4th March 1948, though no explanation seems to have been taken from him

On the 6th November 1948 a remark was made in one of the letters of the Bank that he had shown "steady improvement".

It seems from the entries in the muster roll referred to above that in all probability Ram Sewak was actually kept at the house of the Agent for attending to the latter's private work and that when at times he refused to do such work he fell into disfavour with the Agent. His conduct might perhaps otherwise not have been quite satisfactory but it seems to us that this was essentially not the cause of the dismissal. We, therefore, direct that he be reinstated and paid his pay and allowance for the four months next preceding the reinstatement.

S. D. Misra (*No.* 43):

This case being one of 1943 the Tribunal gives no direction.

K. N. Sarebahi (*No.* 39):

This case was not pressed and therefore no directions are called for.

Sri Krishna (*No.* 11):

His complaint is that his pay for two days was forfeited in the following circumstances. On the 5th February 1949 he was absent for two days without previous application. He was called upon to explain his conduct but his explanation for not having applied for leave has not been produced. He had due to him privilege leave for 9 days and casual leave for 8 days. Dr. Gupta on behalf of the Bank agrees that the Bank would pay his salary for the two days provided he undertakes not to absent himself in future without previous application except in circumstances mentioned in the Deputy Secretary and Treasurer's letter No. Staff/170, dated the 2nd April 1949 to the General Secretary of the Employees' Association in which he stated, "We consider that an employee should ordinarily apply for casual leave in advance in the same way as for privilege leave. However, in the event of an employee being unable due to unforeseen circumstances to make prior application, he can send explanation of his failure to do and his absence will be treated as casual leave that is due to him". In the circumstances no order of the Tribunal is called for.

T. S. Phoola (*No.* 23):

He was a garden *mali*. He alleges that his services were terminated after he had been made to sign a letter of resignation and that when he did that he thought that what he was signing was an application for leave. There is no evidence in support of this allegation and the Bank's case is that he voluntarily vacated his appointment in favour of his brother on the ground of his ill-health. It was suggested by Mr. De that he might be considered for re-employment if a suitable vacancy occurred. This suggestion should be recommended for consideration of the Bank.

Anant Prasad (*No.* 34):

His complaint is that his increment has been stopped. He was appointed in September 1943 and confirmed in March 1944. An increment was due to him on 1st January 1947 under Mr. Gupta's award (he belonged to Grade II Junior scale of Rs. 70—4—126—E. B.—130—5—175). In December 1948 he was getting Rs. 78 per month. Mr. De contended that as long as he was in service he must automatically get the increment under the award except where he had to cross the efficiency bar. Dr. Gupta questioned this proposition and pointed out that the following are evidence of the Bank's *bona fides*: (1) that when previously warned Anant Prasad had made no protest suggesting that the warning

was not justified and (2) that though a warning was given in 1947 he got the increment due on 1st January 1948. It was pointed out by Dr. Gupta that though previous warnings had been given there was no improvement. After the warning given in 1947 two other warnings appear to have been given and yet it seems that no improvement was found and therefore the Bank stopped his increment. The stoppage of an increment when there is no question of crossing the efficiency bar must ordinarily be regarded as a punishment and before such a stoppage is enforced natural justice would require that the employee in question should be given opportunity to explain the circumstances found or alleged against him. Although this was not done in this case Anant Prasad, who appears to have been given at least three warnings, could not have been unaware of the fact that his work was found unsatisfactory by the authorities, and the fact that after the first warning his increment was not stopped shows sufficiently the *bona fides* of the Bank. In these circumstances we give no directions.

Kebal Ram (No. 45):

He was a godown watchman under the Gorakhpur branch at the Sakserai Sugar Mills, Ltd. His complaint is that he has put in 23 years service but he has not yet been confirmed. According to the Bank this employee is entitled to all privileges of the permanent staff, such as gratuity, but as he was attached to the mills he would have to go if the mills were closed down and therefore he is not made permanent. All godown watchmen according to the Bank are temporary. Dr. Gupta has filed a copy of a circular dated 1st August 1949 regarding emoluments for godown *darwans*. It shows that such *darwans* enjoy the same privileges as permanent non-pensionable members of the subordinate staff, *e.g.*, as to gratuity. Mr. De now has no grievance as regards this employee and suggests that no order is necessary. We do not give any directions in this case.

Dalim K. Chatterjee. (No. 18):

He was a teller at the Howrah branch and was suspended on the 15th May 1949 and is still under suspension. On 14th May 1949 the Agent of the Howrah branch complained that a bundle of ten packets of 5 Rupee notes, each containing 100 notes, was missing from the receiving section in the cash department and that there was a shortage of 5,000 rupees in the balance pertaining to that section. It was alleged that the cashiers Dalim K. Chatterjee and Gopi Nath Roy were responsible for the day's receipts, that Dalim K. Chatterjee gave a bundle of Rs. 5,000 of 5 rupee notes to a cooly named Ganga Routh to be tied into a bundle, that the latter tied the notes and placed the bundle on the table and that thereafter that bundle was missing. The Sub-Divisional Magistrate, Howrah, before whom the case was put up remarked, "The arrested persons have good records to their credit. Nothing incriminating could be had against them. It is suspected that some outsider gang is responsible for this offence. Over and above, it is learnt that suspects one and two (suspect one was Dalim K. Chatterjee) have signed a deed promising to pay up the lost money by halves each. As such there is no point as to why they should commit this theft to the risk of their job." The accused in that case were accordingly discharged. The other cashier, *viz.*, Gopi Nath Roy has been allowed to resume duty after paying or agreeing to pay Rs. 2,500 out of the amount of Rs. 5,000 which was lost. Chatterjee does not want to work under his old superior, the Head Cashier, who is related to him and he has paid Rs. 900 out of the sum of Rs. 2,000 demanded from him. Mr. De suggests that the Head Cashier being also held responsible for the loss should pay one-third of the Rs. 5,000 and that as Chatterjee has paid Rs. 900, on

his paying the difference between 1/3rd of Rs. 5,000 and Rs. 900, *i.e.*, Rs. 734-5-9 he should be reinstated. We think that that would be the proper order to make in this case, and we direct accordingly. We further direct that on his making the payment the suspension order shall be set aside and he should be paid his salary and allowances for the six months next preceding his re-instatement.

Shyam Kishore Shukla (No. 15) :

He was appointed a clerk at the Sitapur Branch on the 5th July 1946. He was dismissed on 14th October 1947. The cause of his dismissal was that he had extracted two pages out of one of the Bank's registers. In a letter, dated 6th September 1947 he admitted that he had removed the pages and the reason given by him was that some ink got split over the two blank pages and he thought it best to remove them from the register. This explanation was considered thoroughly unsatisfactory, and as the Bank considered the retention of such a man in service as undesirable he was dismissed. It seems to us on the facts that this is not a case of victimization and we are not, therefore, prepared to make an order for re-instatement. He has claimed an amount of Rs. 178-12-5 as the amount due to him under the Award of Mr. R. Gupta, from 5th July 1946 to 14th October 1947, *i.e.*, from the date of his appointment up to the date of his dismissal. On behalf of the Bank it is contended that he is not entitled to this amount as the Award did not apply to an employee not in the service of the Bank. We are unable to accept this contention. The Award of Mr. R. Gupta was published in the *Calcutta Gazette* on 6th September 1947 and the Award was given effect to from 1st July 1946 and as the appointment of this employee having been made on 5th July 1946 and his services having been terminated on 14th October 1947, he is clearly entitled to this sum of Rs. 178-12-5. We, therefore, direct that this sum be paid by the Bank to him within a month from the date with effect from which the Award becomes operative.

Ram Saran Shukla (No 16) :

He was a cheque-book issuing clerk in the Kanpur branch. He was appointed on 16th August 1942, suspended on the 6th June 1946 and dismissed on the 12th September 1947, *i.e.*, more than 19 months after the date of his suspension. The ground alleged for the dismissal is that he was suspected by the Bank to be implicated in the forgery of a cheque for Rs. 5,000 which was encashed on 31st May 1946. According to the Bank the delay between the dates of the suspension and dismissal was due to the fact that the matter was under investigation by the police and as the police did not complete the investigation, the Bank not wanting the time for suspension to be further prolonged dismissed Shukla because the Bank's suspicion against him was based on strong circumstantial evidence. The complaint of the employee is that no explanation was asked for, that he was not at all suspected at the beginning, that it was only in a letter written on the 12th June 1946 by the Officiating Deputy Secretary and Treasurer that it was made to appear probable that the check form used by the forger had been extracted from the cheque book before it had reached the constituent, and that since then he came to be suspected because the officiating manager of the Kanpur branch came to believe that his handwriting closely resembled that appearing on the forged cheque. This was stated in his letter to the Secretary, and Treasurer, dated the 18th June 1946. Although Rule 48 of the Bank's Book of Instructions

requires that no employee should be dismissed without having been given an opportunity to explain, in this case no explanation was asked for regarding the alleged resemblance of his handwriting to the writing on the cheque. The circumstances relied on by the Bank are (1) that he was the cheque-book issuing clerk, (2) that in the opinion of the officiating Manager his handwriting closely resembled the writing on the forged cheque, (3) he was suspected by the police and arrested and (4) he did not protest to the Bank authorities against his arrest. These circumstances no doubt might raise a suspicion, but as against them are certain other circumstances, for instance, an acknowledgment receipt of the cheque book granted by the constituent, which may be said to raise the presumption that the cheque book had been received by him intact, so that the cheque might have been removed while it was in the custody of the constituent; there is also the opinion expressed by the Agent in a letter, dated 3rd June 1946 and addressed to the Manager, Kanpur district that the branch clerical staff was responsible for extracting the cheque form, forging the signature of the constituent, affixing the pay stamp on it, forging the passing official's signature, giving the cheque a cash roll number, furnishing the person who obtained payment of the cheque with the requisite token and filling in the space intended for the ledger keepers initials in the ledger folio. We do not know if all these matters were taken into consideration by the management in dealing with this case. In any case some light might have been thrown on these and other relevant matters if the employee had been afforded an opportunity to give an explanation. The omission to do so in this case appears to go to the root of the whole case and we are unable, therefore, to let the dismissal order stand. We, accordingly, direct than Ram Saran Shukla shall be reinstated and that the arrears of salary from the date of his suspension to the date of his reinstatement shall be paid to him within a month from the date from which the Award comes into operation.

K. C. SEN,
Chairman.

J. N. MAJUMDAR,
Member.

BOMBAY;
Dated the 20th February, 1950.

S. C. AGGARWAL, *Dy. Secy.*

(Vide *Gazette of India*, Part I—Section I, dated March 18, 1950, pp. 350-361).